

T H E
JUSTICE of the PEACE,
A N D
PARISH OFFICER:

BY RICHARD BURN, CLERK;
One of His MAJESTY'S Justices of the Peace for the
County of WESTMORLAND.

IN TWO VOLUMES.

VOL. I.

In the SAVOY:

Printed by HENRY LINTOT, Law-Printer to the King's Most
Excellent Majesty; for A. MILLAR, in the Strand.

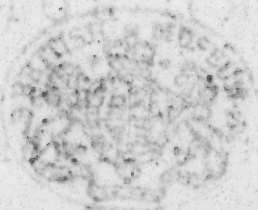
MDCCLV.

SIR JAMES LOWTHER

PARISH OF ST. MICHAEL

LOWTHER, BARNES

BY RICHARD BURN, CLERK



One of His Majesty's Manuscripts in the Library of the British Museum

T HIS BOOK IS A COPY OF THE
ORIGINAL IN THE
POSSESSION OF
THE
BISHOP OF
DURHAM

By the Bishop of Durham

R. BURN

Printed by Henry Lintott, Law-Printer to the King, at the
Exchequer-Office, in the Strand.

MDCCLV.

T O

Sir JAMES LOWTHER

O F

LOWTHER, Baronet,

THIS BOOK is humbly de-
dicated,

By the author,

R. I. BURN.

THE PRINCIPLES OF

THE author proposes in this work to
treat the laws relating to the
rights of man in a more
than with his predecessors.

The first thing proposed is the order of
things in the human mind, and a set forth the
appointment of men to the several
functions of life, and the manner in which
the poor — in whatever manner to each
— in making order for themselves —
in selecting and otherwise ordering their
and last of all, in accordance with the
of their office. — Then again, in treating of
testaments, it occurs, to consider distributive and
as near to the said order as may be, by
tent kinds of testaments — by will — by
the power of testament — by appointment
— by service — by marriage — by in-
cluding forty days after notice — by paying
passages — by serving — parish office —
by sending out a year — and by a person's
own estate. — In like manner, in treating of
the

T H E P R E F A C E.

TH E author proposeth in this book to render the laws relating to the subjects it treats of, a little more intelligible than hath hitherto been done.

The method he makes use of is various.

The first thing regarded is the order of *time*. Thus in the Poor laws; first is set forth the appointment of *overseers*; next the several branches of their duty, in finding *settlements* for the poor — in *removing* them to such settlements — in making *rates* for their relief — in *relieving* and otherwise ordering them — and last of all, in *accounting* at the expiration of their office. — Then again, in treating of *settlements*, it occurs, to consider distinctly, and as near to the said order as may be, ten different kinds of settlements — by *birth* — by the *parents* settlement — by *apprenticeship* — by *service* — by *marriage* — by *inhabiting forty days after notice* — by paying *parish rates* — by serving a *parish office* — by *renting 10l. a year* — and by a person's *own estate*. — In like manner, in treating of

the *rates*, first is set forth the course of *laying the assessment* — then the *allowance* thereof by the justices — *publishing the same* in the church — *appeal* against the rates at the sessions — *levying the same* by *distress* — and finally, *commitment* where no distress can be had.

Thus to exhibit another instance — In the article of the *Woollen manufacture*, which makes up a considerable part of the justice of the peace his duty, and of the officers subordinate to him, there is such a number and variety of statutes, that authors are generally overwhelmed with them. To avoid which perplexity, the laws are here digested in order, according to the natural progress of that business; from the *shearing of the sheep*, to the *exportation of the wool manufactured*; under the several heads of *winding of wool* by the shearer — laws to prevent its *exportation* — *working of cloth* — *fulling* — *measuring* — *dying* — *stretching* — *dresssing* — *exporting*.

Where there is no priority in point of time; the next method is that of Lord Coke, to frame a definition which takes in the whole subject, and then explain the several parts of such definition in their order. Thus *Grand larceny* is defined to be, *A felonious and fraudulent taking and carrying away by any person of the mere personal goods of another, above the value of 12d.* In the handling of which, the several branches of the definition are explained in the order as they stand: viz. *A felonious and fraudulent taking* — *and carrying away* — *by any person* — *of the mere personal goods* — *of another* — *above*

— *above the value of 12 d.* Under which heads the general learning relating to that whole title is comprehended.

The like method is pursued in treating of the *commission of the peace*, the form of an *indictment*, the form of an *order of removal*, and other articles.

In general, it is provided, that one thing shall *clear* the way for another, and the subsequent paragraphs explain the preceding.

Under the influence of which conduct, the author hath attempted to bring together under one general title, divers articles relating to the same subject, which in the common books are broken and detached under various separate titles; hoping thereby, that what hath hitherto been thought introductory of confusion, may tend to render the subject more perspicuous, in exhibiting the whole under one comprehensive view. Thus the laws relating to the *game*, which are above forty in number, and are interspersed in the common books under about thirteen different titles, are here digested under one general title *Game*, to which the reader shall have recourse for the knowledge of whatsoever belongeth to that subject. For example, if any person would be satisfied, what penalty the law hath provided for *tracing hares in the snow*; by recurring to the general title concerning the game, he will find the game distinguished into three kinds, the *four footed game*, the *winged game*, and the game of *fish*: The *four footed game*, are distributed into the several species of *deer*, *hares*, and *conies*; under which

head concerning *hares*, he will readily find what is desired. In like manner, the *winged game* are subdivided into several branches, concerning *hawks and hawking* — *swans* — *partridges and pheasants* — *pigeons* — *wild ducks, wild geese, and other water fowl* — *grouse or moor game* — *herons* — and *other fowl*; each of which have their peculiar laws.

In these large comprehensive titles, care is likewise taken, to be as particular as may be without injuring the connexion in the statutes, by inserting the whole law by it self, relating to each separate article. The benefit of which will appear by the following instance: If a person would know, what number of horses or beasts in a cart or waggon are allowed by the statutes for the preservation of the roads; let him take what treatise at present he pleases concerning the highways, he must read over the whole, before he shall be sure that he hath found all which the law hath enacted concerning the same; and such is often the inaccuracy and confusion, that when he hath perused the whole, perhaps he may be still to seek. For as to this instance before us, there have been regulations made concerning the same, by ten different acts of parliament, at very different times. Before he can have any competent knowledge thereof, he must lay all these ten acts together; and when he shall have done this, he will find amongst them so many repeals, and revivals, and explanations, and amendments, that it will even then be no easy matter to conclude with certainty how the law doth stand as to that article. To spare the reader all which trouble, the author hath in this and all other the like instances,

instances, laid the whole law together relating thereunto, or at least all that hath occurred to him, or which he hath thought it material to insert. So that the reader may receive satisfaction in a very small compass, as to what he shall be inquiring about, or at least he may be satisfied in this, that if he doth not find it there, he need not seek for it elsewhere in the book.

And by this method of bringing together into one general title, all those separate distinct titles, which have a mutual relation to and dependance upon each other, the author hath avoided one great inconvenience, of referring the reader from one title to another, and from that other back again to the first, and (which is not unusual in books of the like kind) perhaps losing the thing to be treated of betwixt them.

Upon which account also, where one law occurreth under two different titles, it is usual with him to insert the same under both those titles; that so the reader's attention may not be interrupted, by sending him to search other titles, and from those perhaps others again, which have no principal relation to the matter he hath in hand.

Also, upon another account, he hath sometimes made use of more words than otherwise he would have done, namely, to avoid the frequent repetition of the term *Et c.*; which is a vague expression, and apt to create an uneasiness in the reader's mind, for that he cannot be satisfied

tisfied from thence, how much, or how little is intended to be understood.

He hath also been somewhat large in the matter of precedents under divers titles; and hath endeavoured to bring them much nearer to the statutes, upon which they ought to be formed, than usually hath been done.

For all which enlargements, he hath the more space allowed to him, for that he hath not thought it necessary (as others have done) to take up near one fourth part of the book, by inserting *Blackerby's* justice at the end of it, by way of index; hoping that the method he hath pursued will render every thing of that kind impertinent and useless.

The materials which the author hath made use of, are chiefly of four kinds — The *statutes* at large — the several treatises concerning the *pleas of the crown* — the *reports* of cases adjudged in the court of king's bench — and the books concerning the *office of a justice of the peace*.

As to the *statutes* at large, or acts of parliament; the author hath by no means thought himself at liberty, as Mr. *Dalton* and others have done, to deliver the import thereof in his own words; but hath constantly abridged the act, in the words of the act it self, leaving out as little as possible which may seem any way material. And to each distinct clause, he hath annexed the interpretation thereof, where the same hath been determined in the court of king's

king's bench, or expounded by other good authority.

The treatises concerning the *pleas of the crown*, are those of *Stamford*, *Coke*, *Hale*, and *Hawkins*. Of the first of these, the author hath made little use, further than as he is adopted by the other three. As to which three great authorities, where the law hath been declared by Lord *Coke*, and not controverted by any other, nor altered since his time by any act of parliament, or judicial determination, the author hath given to him the preference. And where any of these differeth from the other, he hath noted the difference.

In citing of Mr. *Hawkins*, he hath not thought it allowable, as is usual with others, to omit the several degrees of caution and assent, with which he delivereth his opinion; as, *it seemeth*, or *it hath been said by some*, or *it seemeth to be the better opinion*, or *it seemeth to be agreed*, and the like; which are by no means arbitrary words without much meaning, but are inserted by him with the utmost deliberation and judgment.

As to the books of *reports*; where the cases therein have been considered by Mr. *Hawkins*, and the other learned persons before mentioned, the author hath judged it very proper to leave the matter there, as settled by them. As to the rest, he hath by no means thought himself of ability to proceed in Mr. *Hawkins's* manner, by laying together all the reports on the same subject, and thereupon extracting an opinion out of the whole; but hath inserted the same at
I large,

large, or what he hath thought most material thereof, and left the determination thereupon to the reader's better judgment.

And here it may be requisite, that the reader be admonished, not to expect that the book shall be more perfect, than the materials of which it is composed. All the books of reports are not of equal authority. Some, as those of *Keble*, *Salkeld*, *Lord Raymond*, and many others, are approved or allowed by the Judges: others, which are perhaps not of less internal authority, have not received that sanction; Such, for instance, are those of *Lord Coke*. During the greatest part of his present Majesty's reign, no authentick collection of reports hath been published, of cases adjudged in matters relating to the subjects of this book. Herein the author could do no otherwise than make use of the materials he hath. Such are, particularly, *Andrew's reports*, and two volumes of *Sessions cases* published without the author's name. Of these it may be observed, that in the main they do agree very well with books of good authority, where they happen to report the same cases; and have no appearance of wilful falsification in cases not reported elsewhere. But for these, or any other, the author himself voucheth not: And, as he doth not add to their credit, so he doth not detract from it; but leaveth every author (as he needs must) to answer for himself. For he hath made it an invariable rule, upon all occasions, to cite his authorities, what such soever they be; and, in all material instances, in the very words of the original authors: that so, what may be of good authority in it self, shall not be

be rendred less so by his handling of it. And where no authority is alledged, he desires the reader will look upon it as such, namely, as having no authority; the same being nothing else but the author's own private observations, which are submitted to every reader's judgment, to approve or reject as he shall see cause.

The books of authority concerning the *office of a justice of the peace*, are those of *Fitzherbert*, *Crompton*, *Lambard*, and *Dalton*; the last of which was published in the reign of king *James* the first: since which time, no book under that title hath been allowed as sufficiently authentick. And even the additions which have been made to *Dalton* since his death, seem to have no better claim to an uncontrollable authority, than other collections which have not obtained it. And *Dalton* himself is much injured in the modern editions, in like manner as was observed before of Mr. *Hawkins*, by delivering that as absolute, which Mr. *Dalton* published under the several degrees of assent or doubtfulness before mentioned; and which the author, in justice to Mr. *Dalton*, hath restored.

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Concerning the other books of this kind, which have been published since *Dalton's* time, it is unnecessary to enlarge; since of the most of them the author hath made no use, and of the rest very sparingly; and he will not seek to recommend his own book, by finding fault with others before him.

Orton, *Westmorland*,

Sep. 29. 1754.

I N T R O -

INTRODUCTION,

Consisting of Two parts; Containing,

- I. *Certain abbreviations made use of in this work.*
- II. *Some general rules to be observed, in the construction of statutes, or acts of parliament.*

I. **I**N order to keep the book within a reasonable compass, the following *abbreviations* are made use of.

1. The word *Justice* is always to be understood *Justice.* to mean *Justice of the peace*, when not otherwise expressed.

2. The words *one justice* shall always be understood *One justice.* to signify *one or more justices*: so that what is directed to be done by one, shall not be intended thereby to exclude others from joining with him.

3. In like manner, *two justices*, when not otherwise expressed, shall be understood to signify *two justices or more.* *Two justices.*

4. So also a conviction on the oath of *one witness*, shall be understood to denote *one witness or more.* *One witness.*

5. And *two witnesses* shall denote *two or more witnesses.* *Two witnesses.*

6. (1 2.) shall be understood to signify *one whereof is of the Quorum.* *Quorum.*

7. The *justices in sessions* shall signify the said *justices, or the major part of them.* *Majority.*

8. The

Sessions.

8. The word *sessions* shall denote the general or quarter sessions, if not otherwise expressed.

Warrant.

9. The word *warrant* shall always signify *warrant under hand and seal*, where not expressed otherwise.

Judge of
assize.

10. Judges or Justices of *assize* shall be understood to signify also those of *Nisi Prius*, *Oyer and Terminer*, and *General Gaol Delivery*.

Mayor.

11. The word *Mayor* shall always be understood to imply *bailiffs and other chief officers in corporations*.

Constable.

12. The word *constable* shall always be understood to imply *tythingmen, borsholders, headboroughs, and other peace officers of like degree*.

Overseer.

13. The word *overseer* shall be understood to mean *overseer of the poor*, where not expressed otherwise.

Poor.

14. Where a penalty, or part thereof, is expressed to be given to the *poor*; that shall be always understood to denote *the poor of the parish where the offence was committed*, if not otherwise limited.

Penalty.

15. Where a penalty is to be recovered before the justices of the peace, it is thought indispensable to insert particularly the manner of recovering the same; but where it is to be sued for in any of his majesty's courts of record at *Westminster*, it is judged not necessary to set forth the special method of procedure there: and generally, where it is expressed, that a person shall do, or not do such a thing, on pain of such a sum, without more, it shall be understood that such penalty is not recoverable before the justices of the peace, but only in the courts at *Westminster*.

Overplus.

16. In all cases of *distress and sale*, it shall be understood, that the *overplus* must be returned to the owner; after the sum or sums to be thereout deducted, shall be satisfied and paid.

Lands.

17. *Lands* shall be understood to stand for *lands, tenements, and hereditaments*.

Transporta-
tion.

18. Where *transportation* is directed for any offence, it shall always be understood, that *if the offender*

fender shall return before the time limited, he shall be guilty of felony without benefit of clergy.

19. In the blank spaces for the names in the precedents, instead of inserting initial letters arbitrarily, it is thought it may be some small help to the memory, that *A. O.* shall signify the offender, *A. I.* the informer, *A. W.* the witness, *J. P.* the justice of the peace, and the like. Blank spaces.

20. Also, for brevity sake, sums of money and other numbers are usually expressed by figures, and not in words at length; but it is to be remembered, that in the forms of warrants, convictions, and other proceedings before the justices, they ought to be expressed in words at length, and not in figures. Figures.

21. Where a statute is said to be in force, until such a day, month, and year, &c. it shall always be understood to imply, *and from thence to the end of the then next session of parliament.* Continuance of statutes.

22. In the statutes made in the reign of the late King *William*, it is thought not necessary upon all occasions to say *William the Third*, since there are no printed statutes in the reigns of *William the First and Second.* Citing of statutes.

Nor is it thought necessary in such statutes to add the name of *Queen Mary* to that of *King William*; but it is judged sufficient for the understanding thereof, to quote the statutes in this manner; *viz.*

1 *W. Sess.* 2. *c.* 6. *f.* 3. to signify the statute made in the parliament holden in the first year of the reign of *King William* the third and *Queen Mary*, the second session thereof, chapter the sixth, section the third.

23. The citations of books as authorities, or otherwise occasionally noted, do signify as followeth: Books cited.

Andr. *Andrew's Reports.*

Barl. *Barlow's Justice.*

Black. *Blackerby's Cases.*

Bro. *Brooke's Abridgment.*

Brownl. *Brownlow's Reports.*

Bulstr. *Bulstrade's Reports.*

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Can.

- Can.* Canons of the church made in 1603.
Carth. Carthew's Reports.
Cas. of S. Cases of Settlements.
Clayt. Clayton's Reports.
Cod. Gibson's Codex Juris Ecclesiastici Anglicani.
1, 2, 3, 4 Inst. Coke's first, second &c. Institute.
1, 2 — 12. Co. Coke's Reports. Part the first, &c.
Comb. Comberbach's Reports.
Comyns. Comyns's Reports.
Cro. Eliz. Jac. — Car. Croke's reports of Cases adjudged in the reigns of Elizabeth, James I, and Charles I respectively.
Crompt. Crompton's Justice.
Crown Circ. Crown Circuit companion.
Dalt. Dalton's Justice.
Dalt. Sher. Dalton's Sheriff.
Danv. D'Anvers's Abridgment.
Degge. Degge's Parson's counsellor.
Dr. and St. Doctor and Student.
Dyer. Dyer's Reports.
Far. Farresley's Reports.
Finch. Finch's law.
Fitz. Abr. Fitzherbert's Abridgment.
F. N. B. Fitzherbert's Natura Brevium.
Foley. Foley's Poor laws.
Goldsb. Goldsborough's Reports.
Greenw. Greenwood of Courts.
H. Hist. C. L. Hale's History of the Common Law.
H. H. Hale's History of the pleas of the crown.
H. Pl. Hale's Pleas of the crown.
Haw. Hawkins's Pleas of the crown.
Hob. Hobart's Reports.
Keb. Keble's Reports.
Kely. Kelyng's Reports.
Lamb. Lambard's Justice.
Latch. Latch's Reports.
Law of Ev. Law of Evidence.
Leon. Leonard's Reports.
Lev. Levinz's Reports.
Litt. Littleton's Reports.
Luc. Lucas's cases in law and equity.

Lutw. Lutwyche's Reports.
Manw. Manwood's Forest Laws.
March. March's Reports.
Mir. Horn's Mirrour.
Mod. Modern Reports.
Moore. Moore's Reports.
Nels. Nelson's Justice.
Palm. Palmer's Reports.
Par. L. Shaw's Parish law.
Pult. Pulton de pace.
Raym. Sir Tho. Raymond's Reports.
L. Raym. Lord Raymond's Reports.
Read. Readings upon the statutes.
Roll. Abr. Rolle's Abridgment.
Roll. Rep. Rolle's Reports.
Salk. Salkeld's Reports.
Sess. C. Sessions Cases.
Shaw. Shaw's Justice.
Show. Shower's Reports.
Sid. Siderfin's Reports.
Spelm. Spelman's Glossary.
Stam. Staundford's pleas of the crown.
St. Tr. State Trials.
Sty. Style's Reports.
Trem. Tremaine's Entries.
Tr. per p. Trials per pais.
Vaugh. Vaughan's Reports.
Ventr. Ventris's Reports.
Vern. Vernon's Reports.
Wats. Watson's Compleat Incumbent.
Wood. Wood's Institute.

II. To avoid repeating the same observations some hundreds of times, it is thought proper to premise the following general rules to be observed, in the construction of statutes, or acts of parliament.

I. Regularly, a statute in the affirmative doth not repeal a precedent affirmative statute. II Co. 61. How far an affirmative repealeth an affirmative.

But if the latter is contrary to the former, it amounteth to a repeal of the former, L. Raym.

How far an affirmative statute altereth the common law.

Repealing a repealing statute.

Special power to be pursued.

Power to administer an oath.

In what case the sessions may execute the power given to two justices.

How far an indictment will lie where another method of prosecution is appointed.

Where no method of prosecution is appointed.

2. A statute made in the affirmative, without any negative expressed or implied, doth not take away the common law; and therefore the party may waive his benefit by such statute, and take his remedy by the common law. *2 Inst. 200.*

3. By repealing of a repealing statute, the first statute is revived. *Read. Parl.*

4. Regularly, where an act of parliament giveth a power or interest to one person certain, by this express designation of one, all others are excluded. *11 Co. 59, 64.*

5. In all cases, where justices may take examinations, or other accusation or proof, tho' the statute doth not expressly set down that it shall be upon oath, yet it shall be intended that it shall be upon oath. *Dalt. c. 115.*

6. Generally, it is holden, that where a statute appoints a thing to be done by one or more justices, without giving any appeal to the sessions; there the justices in sessions may do that thing: but where an appeal is given to the sessions, the justices in sessions cannot proceed originally therein, because that method would take away the power of appealing.

7. Where a statute makes a new offence, which was no way prohibited by the common law, and appoints a particular manner of proceeding against the offender, as by commitment, or action of debt, or information, without mentioning an indictment; it seems to be settled at this day, that it will not maintain an indictment, because the mentioning the other methods of proceeding only, seems impliedly to exclude that of indictment: Yet it hath been adjudged, that if such a statute give a recovery by action of debt, bill, plaint, information, or otherwise, it authorizes a proceeding by way of indictment. *2 Haw. 211.*

8. But every contempt of a statute is indictable, where no other punishment is limited. *1 Haw. 60.*

9. And

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9. And wheresoever an act of parliament doth generally prohibit any thing, the party grieved shall not only have his action for his private relief, but the offender shall be punished at the king's suit, for the contempt of the law. *2 Inst. 163.* Where the defendant may be prosecuted both by the king, and the party grieved.

10. All actions, indictments, or informations, on penal statutes, for any forfeiture limited to the king, shall be brought within two years after the offence committed; if limited to the king and prosecutor, then within one year; and if it is not sued for in that one year, then the king may sue for the same within two years, after the expiration of that one year; and not otherwise. *31 El. c. 5. s. 5.* In what time prosecutions shall be on penal statutes.

11. Many ancient statutes are penned in the form of charters, ordinances, commands, or prohibitions from the king, without mentioning the concurrence of either lords or commons; yet inasmuch as they have always been acquiesced in as unquestionably authentick, this establishes and confirms their authority, and the defect is salved by such universal reception. *Hawkins's preface to the statutes.* Statutes not in the name of the whole legislature.

12. The preamble or rehearsal of a statute is deemed true; and therefore good arguments may be drawn from the preamble. *1 Inst. 11.* Preamble.

13. Where a statute directs the doing of a thing, for the sake of justice, or the publick good; the word *may*, is the same as the word *shall*: as where the statute of the 14 C. 2. c. 12. enacts that the overseers may make a rate to reimburse the constables, this is construed they *shall*; for they are compellable so to do. *2 Salk. 609.* May do such a thing, how to be understood.

14. Where a statute directs a penalty to be recovered *in any court of record*; this shall not be intended of the quarter sessions, unless it be specially named in such statute; but only of the courts of record at *Westminster*. *6 Co. 19, 20. 2 H. H. 29, 30.* Court of record.

15. It is a general rule in the construction of statutes, that where things of an inferior degree are first mentioned, those of a higher dignity shall not be included under general subsequent words; as where Higher courts not intended, where the inferior are first mentioned.

where a statute speaks of indictments to be taken before justices of the peace, or *others having power to take indictments*, it shall be understood only of other inferior courts, and not of the king's bench, or other courts at *Westminster*. 2 Co. 46, 2 Haw. 305.

Power to convene the parties.

16. Where a statute gives power to the justices, to require any person to do a thing, as to take the oaths, the law implicitly gives them power to make a warrant to have the body before them; for when the law granteth any thing to any one, that also is granted, without which the thing it self cannot be: And it is against the office of the justices, and the authority given them by the law, that they shall go and seek the parties. 12 Co. 130, 131.

Necessity of summoning the party.

17. Where a statute gives power to the justices of the peace, to hear and determine an offence in a summary way; it is necessarily implied, and supposed, as a part of natural justice, that the party be first cited, and have opportunity to be heard and answer for himself. 1 Haw. 154.

Two justices to be both together.

18. Where an act of parliament gives power to two justices finally to hear and determine an offence, it is necessarily supposed, that they shall be both together, or, which is the same thing in other words, that they shall hold a special sessions for that purpose. And the like is, when they are to do any other judicial act, as to make an order of bastardy, or adjudge the settlement of a poor person. For it is unknown to the laws of *England*, that two persons shall act as judges in the same cause, when at the same time one of them is in one part of the county, and the other in another.

Informers' oath.

19. Where a statute appoints a conviction to be on the *oath of one witness*; this ought not to be by the single oath of the informer; for if the same person should be allowed to be both prosecutor and witness, it would induce profligate persons to commit perjury, for the sake of the reward. L. Raym. 1545.

20. Where a statute directeth, that a person shall be convicted of an offence, upon the *oath of one or more witnesses*, and saith nothing of the *confession* of the party; yet if the offender shall before the justice confess the offence, he may be convicted upon such confession: for confession is stronger evidence than the oath of witnesses. *Dalt.* 109, 162. Confession.

21. Where an act of parliament gives power to the justices of the peace, to take order in any matter, *according to their discretions*; this shall be understood, according to the rules of reason, law, and justice, and not by private opinion. *5 Co.* 100. Discretionary power.

22. In all cases where *the kingdom of England*, or *that part of Great Britain called England*, hath been or shall be mentioned in any act of parliament; the same shall be deemed to comprehend *the dominion of Wales, and town of Berwick upon Tweed.* *20 G. 2. c. 42. s. 1.* England includes Wales.

23. By the articles of the Union, *5 An. c. 8.* All parts of the united kingdoms of *England* and *Scotland*, shall be under the same regulations as to trade: So that where any act, in relation to trade, before the *5 An.* mentions the kingdom of *England*, the same shall be understood to extend to the whole united kingdom. How far Scotland is included.

24. It may be laid down as an invariable rule, that *the law favours liberty*: So that in the construction of a penal statute, where the interpretation is dubious, that sense must be pursued (all other things being equal) which is more beneficial to the subject, or the party suffering. Thus, where an act directs, that the justices shall commit an offender to prison for *12 months*, the justices may not alter the words, and commit him for *a year*; for in this respect, *12 months* and one year are not the same; but the months must be computed at 28 days to the month, and not as Kalendar months, unless it be so expressed in the act. Twelve months.

25. In all cases wherein, by any act of parliament, an oath shall be allowed or required; the *formation*.

- lemn affirmation of quakers shall be allowed instead of such oath, altho' no particular or exprefs provision be made for that purpose in the said act. 22 G. 2. c. 46. s. 36.
- Forfeiture.** 26. To say that a person shall *forfeit* generally, or that he shall *forfeit to the king*, is all one; for the king shall have every forfeiture not otherwise limited. 11 Co. 60.
- Fine and ransom.** 27. Where a statute saith, that such a person shall pay *fine and ransom* to the king; in legal understanding, such fine and ransom are all one: for if they were divers, then should the party pay two sums, one for the fine, and another for the ransom; which was never done. 1 Inst. 127.
- At the king's pleasure.** 28. Acts of parliament that speak of fines or ransoms *at the king's pleasure*, are always to be understood of the king in his courts by his justices. 1 H. H. 375.
- Where a power of commitment is implied.** 29. It is said, that wheresoever a justice of the peace is impowered, by any statute, to bind a person over, or to cause him to do a certain thing, and such person being in his presence shall refuse to be bound, or to do such thing; the justice may commit him to the gaol, to remain there till he shall comply. 2 Harw. 116.
- Imprisonment, when.** 30. When a statute appoints imprisonment, but limits no time when; it shall be immediately. 8 Co. 119.
- Imprisonment, how long.** 31. When a statute appoints imprisonment, but limits no time how long; the prisoner in such case must remain at the discretion of the court. Dalt. 410.
- Commitment to the house of correction, for what time.** 32. Where any offender shall by a justice of the peace be committed to the house of correction, for an offence cognizable before him out of sessions, and the time and manner of punishment is not by law expressly limited; he may commit him to the house of correction, *there to be kept to hard labour, until the next general or quarter sessions, or until discharged by due course of law.* 17 G. 2. c. 5. s. 34.

33. Wherever a statute makes any offence *felony*; it incidentally gives it all the properties of felony at common law. 1 *Haw.* 105. Statute making an offence felony.

34. Therefore an act of parliament that makes an offence felony, doth consequently introduce the punishment of concealing, that is, misprision of felony; and every offence made felony by act of parliament, includeth misprision. 1 *H. H.* 708. Misprision.

35. An act making a new felony, extendeth not to infants under 14 years of age; but if they be of that age, it binds them. 1 *H. H.* 706. Infants.

36. Not only those crimes which are made felonies by the exprefs words of any statute, but also those which are decreed to have or undergo judgment of life and member, do become felonies thereby, whether the word felony were mentioned or not. 1 *Haw.* 107. Life and member.

37. But an offence shall never be made felony by the construction of any doubtful and ambiguous words of a statute; and therefore if it be only prohibited under pain of *forfeiting body and goods*, or of being *at the king's will for body, lands, and goods*, it shall amount unto no more than a high misdemeanor, punishable by imprisonment, or the like. 1 *Haw.* 107. Body and goods.

38. All felonies by the common law have the benefit of clergy; therefore where a statute enacts a felony, and says, the offender shall *suffer death*, clergy lies notwithstanding, and is never ousted without exprefs words. 3 *Inst.* 73. 2 *Haw.* 342. Benefit of clergy.

39. Saving of *dower* in a statute making an offence felony, is superfluous; for by the 1 *Ed.* 6. c. 12. Dower is not lost by the felony of the husband. *f.* 17. Forfeiture of dower.

40. Where a penalty is given to an informer upon a penal statute; he shall have no *costs*, unless the statute it self directs it, but he shall pay his costs out of the penalty. 2 *Haw.* 274. Costs.

Therefore where a justice hath power to inflict a pecuniary penalty, not exceeding such a sum; he may

INTRODUCTION.

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Therefore where a justice hath power to inflict a pecuniary penalty, not exceeding such a sum; he may

may do well in such penalty to consider the costs of prosecution.

Damages.

41. No *damages* can be given to the party grieved, upon an indictment, or any other criminal prosecution; and where by statute damages are given to the party grieved, it seems that they cannot be recovered on an indictment at the suit of the king, grounded on such statute, unless such method of recovering them be expressly given by the statute; but that they ought to be sued for in an action on the statute, in the name of the party grieved. But it is every day's practice in the court of king's bench, to induce defendants to make satisfaction to prosecutors, for the costs of the prosecution, and also for the damages sustained, by intimating an inclination on that account to mitigate the fine due to the king. 2 *Haw.* 210.

Treble damages.

42. Where a statute gives *treble damages*; the justices are not to assess the damages, and then treble them; but the jury ought to find the damages, and then the justices are to treble them. *Cro. Car.* 449.

Distress and sale.

43. In all cases where a justice is or shall be required by any act of parliament, to issue a warrant of distress for the levying of any penalty inflicted, or any sum of money directed to be paid by such act; it shall be lawful for such justice granting such warrant, therein to order and direct the goods and chattels so to be distrained, to be sold and disposed of within a certain time to be limited in such warrant, so as such time be not less than 4 days, nor more than 8 days, unless such penalty or sum of money, together with reasonable charges of taking and keeping the distress, be sooner paid. And the officer making such distress, may deduct the reasonable charges of taking, keeping, and selling such distress, out of the money arising by such sale; and the overplus (if any) after such charges, and also the said penalty or sum of money, shall be satisfied and paid, shall be returned on demand to the owner of the goods and chattels so distrained. (Except only in cases of distress for quakers tithes and church rates.) 27 *G. 2. c.* 20.

44. An act inflicting a penalty for a *second offence*, Second of-
must always be understood, after conviction and judg- fence.
ment for the first offence; and the second offence
must be committed after the first conviction, and
judgment thereupon given; for it doth not appear to
be an offence, until judgment by proceeding of law
be given against the offender. 2 *Inst.* 468.

And the indictment for a second offence, must re-
cite the record of the first conviction; and upon the
evidence, the record of the first conviction must be
proved: but the matter of the first conviction shall
never be re-examined, but must stand for granted.

1 *H. H.* 686.

POSTSCRIPT.

THE derivation, which seemeth the most genuine, of the word *bankrupt*, or *banqueroute*, came too late to be inserted in its place; which is, that it comes from the *Italian Banco rotto*, the *bench* being *broken*: for it is well known, that the first bankers to us, came from that country. The *banker* himself originally was so called from the *bench* or table which he used, with his name inscribed; and when he failed, his bench was broken. Which word *rotto* is what remaineth in that country of the *Latin ruptus*; all which, both word and metaphor, we preserve in our language, when we say that a man is *bankrupt*, or that such a one is *broken*. For which derivation, as also for that of *bue* and *cry*, *constable*, and some others, I am obliged to my very learned friend Dr. Morton of *Leicester-fields*, which last word [*constable*] hath puzzled all the authors, both ancient and modern, to investigate its origin. This Gentleman hath duly traced the word *cône* or *cûne*, from whence the Saxons had their *conyinge* or *kyning*, and we our king, from its arrival in *England* backwards through *France* and *Germany* and *Greece*, into its native *Palestine*, where it signified in the times of the Old Testament, a *stability*, *strength*, or *stay*; and thinketh that he perceiveth something of it in the name of *Laocoon* at *Troy*, and even of *Constantine* the emperor, who removed the imperial seat to *Constantinople*: for *Constantine* was then a new name amongst the *Romans*; *Constantina*, sister to the emperor *Claudius Flavius* (who was great uncle to *Constantius* the father of *Constantine* the great) being the first of that name recorded in history; which *Claudius* was a native of *Dardania*, and was said by his flatterers to have been descended from *Dardanus* and the *Trojans*. And it was in the reign of this *Constantine*, that the word *count* (the genuine offspring of *cône*) first became a name of dignity, and from thence travelled Westward, and was received into the languages of the *Italians*, *Belgians*, *Franks*, *Saxons*, and other nations with whom the *Romans* had intercourse. And the word *stole*, *stalle*, *stafte*, *stable* (by an easy transmutation of those letters frequent in almost all languages) and which signifieth a *standing place*, *division*, or *department* (called by the *Romans statio*), he deduceth unto us, from that seat of the imperial jurisdiction, through the channel of the *Gothic*, *Frank*, *German*, *Belgic*, and other languages of the Western empire. So that the word *constable*, according to this etymology, will properly signify, the *stability* or *stay* of the place, or the *strong man* of the division.

*Ος τὰ ὀνόματα ἰδῆ, καὶ τὰ πράγματα.

Plato.

Abjuration Oath. See Oaths.

Accessory.

I. Of accessories in general.

II. Of accessories before the fact.

III. Of accessories after the fact.

IV. How they are to be proceeded against.

I. Of accessories in general.

1. **A**CCESSARY (*quasi accedens ad culpam*) is he that is Accessary, what, not the chief actor, but one that is concerned in the felony by commandment, aid, or receipt. *Wood* 663.

2. In the highest capital offence, namely, high treason, there are no accessories, neither before nor after; for the consenters, aiders, abettors, and knowing receivers and comforters of traitors, are all principals. *1 Hale's Hist.* 613. In the highest offence, no accessories.

But yet as to the course of proceeding, it hath been, and indeed ought to be the course, that those who did actually commit the very fact of treason, should be first tried, before those that are principals in the second degree; because otherwise this inconvenience might follow, that the principals in the second degree might be convicted, and yet the principals in the first degree may be acquitted, which would be absurd. *1 H. H.* 613.

3. In cases that are criminal, but not capital, as in *petit larceny* and *trespass*, there are no accessories; for all the accessories before and after, are in the same degree as principals; and accessories after, by receiving the offenders, cannot be in law under any penalties as accessories, unless the acts of parliament that induce those penalties do expressly extend to receivers or comforters, as some do. *1 H. H.* 613. In the lowest offence, no accessories.

4. It remains therefore, that the business of this title of accessories refers only to *felonies*, whether by the common law, or by act of parliament. *1 H. H.* 613. Accessories only in felony.

5. Concerning which, Lord Coke observes generally, that when any offence is felony, either by the common law, or by statute, all accessories both before and after are incidentally included. Accessories implied in felony.

3 Inst. 59.

6. But as to felonies by act of parliament, Lord Hale distinguishes thereupon as follows: Regularly (he says) if an act of parliament enact an offence to be felony, tho' it mention nothing of accessories before or after, yet virtually and consequentially those Accessories in felonies by statute.

Accessory.

that counsel or command the offence, are accessaries before, and those that knowingly receive the offender are accessaries after. 1 H. H. 613.

But if the act of parliament that makes the felony, in express terms comprehend accessaries before, and make no mention of accessaries after, namely, receivers or comforters, there it seems there can be no accessaries after; for the expression of procurers, counsellors, or abettors, all which import accessaries before, make it evident, that the law-makers did not intend to include accessaries after, which is an offence of a lower degree than accessaries before. 1 H. H. 614.

And altho' it be generally true, that an act of parliament creating a felony, renders consequentially accessaries before and after within the same penalty, yet the special penning of the act of parliament in such cases, sometimes varies the case: Thus the statute of 3 H. 7. c. 2. for taking away women, makes the offender, and the procuring and abetting, yea and wittingly receiving also, to be all equally *principal* felonies, and excluded of clergy. Again, the statute of 27 Eliz. c. 2. makes the coming in of a jesuit *treason*, the receiving or relieving of him *felony*, the contributing of money to his relief a *præmunire*. So that acts of parliament may diversify the offences of accessory or principal, according to the various penning thereof, and so have done in many cases. 1 H. H. 614, 615.

How far accessaries by statute shall have their clergy.

7. Also a statute excluding the principals from the benefit of clergy, doth not thereby exclude the accessaries before or after; neither doth a statute, excluding the accessaries, thereby exclude the principals. 2 Harw. 342.

II. Of accessaries before the fact.

Accessory before.

An accessory before the fact committed, is he that being absent at the time of the felony committed, doth yet procure, counsel, command or abet another to commit a felony.

Being absent at the time of the felony committed] For if he is present, he is not an accessory, but a principal.

So also, if divers come to commit an unlawful act, and be present at the time of the felony committed, tho' one of them only doth it, they are *all* principals. *Hale's Pl.* 215.

So if one present move the other to strike; or if one present did nothing, but yet came to assist the party if needful; or if one hold the party while the felon strikes him; or if one present deliver his weapon to the other that strikes: for they are *present*, aiding, abetting, or comforting. *Ibid.* 216.

But if one came casually, not of the confederacy, tho' he hindered not the felony, he is neither principal nor accessory, altho' he apprehend not the felon; but for his negligence he is punishable by fine and imprisonment. *Hale's Pl.* 216. 2 Harw. 313.

Also in some cases, even a person absent may be principal; as he that puts poison into any thing to poison another, and leaves it, tho' not present when it is taken: And so it seems all that are present

present when the poison is so infused, and consenting thereunto.
Hale's Pl. 216.

Procure, counsel, command, or abet] But here note some diversities: As,

(1.) *When the principal doth not accomplish the fact altogether in the same sort, as it was beforehand agreed between him and the accessory.* And therefore if one command another to lay hold upon a third person, and he lays hold upon him and robs him, the person commanding is not accessory to the robbery; for his command might have been performed without any robbery. *Dalt. c. 161.*

But if the command had been to beat him, and the party commanded doth kill him, or beat him so that he dieth thereof; the person commanding shall be accessory to the murder: for it is a hazard in beating a man, that he may die thereof. *Dalt. c. 161.*

(2.) *He that commandeth or counselleth any evil or unlawful act to be done, shall be adjudged accessory to all that shall ensue upon the same evil act, but not to any other distinct thing.* As if one command another to steal a horse, and he stealeth an ox; or to rob a man by the highway of his money, and he robs him in his house of his plate; or to burn such an one's house, and he burneth the house of another: These are other acts and felonies than he commanded to be done, and therefore he shall not be adjudged accessory to them. *Dalt. c. 161.*

(3.) *But if a person commit the same felony, which another did command or counsel to be done, tho' he doth it at another time, or in another place, or in another sort than was commanded or counselled, yet here such person commanding or counselling shall be accessory.* As if he doth counsel to kill a man by poison, and he kills him with a dagger; or to kill him by the highway, and he kills him in his house; or to kill him one day, and he kills him on another day; in these and the like cases, he shall be accessory. *Dalt. c. 161.*

(4.) *Those offences which in the construction of law are sudden and unpremeditated, cannot have any accessories before.* As killing a man by misadventure, in his own defence, or manslaughter: For in such case there can be no procuring, counselling, commanding, or abetting. But there may be accessories after. *1 H. H. 616.*

(5.) It seems to be generally agreed, that *he who barely conceals a felony, which he knows to be intended, is guilty only of a misprision of felony, and shall not be judged an accessory; for this is not procuring, counselling, or abetting.* *2 Harw. 317.*

(6.) Also, if a man counsels or commands another to kill a person, and before he hath killed him, he who counselled or commanded it, repents, and countermands it, charging him not to kill him, and yet after he doth kill him; here such person countermanding shall not be adjudged accessory to the murder: For the law adjudgeth no man accessory to a felony before the fact, but such as continue in that mind at the time that the felony is done and executed. *Dalt. c. 161.*

(7.) But if a person advise a woman to kill her child as soon as it shall be born, and she kill it in pursuance of such advice; he is an accessory to the murder, tho' at the time of the advice, the child not being born, no murder could be committed of it: For

the influence of the felonious advice continuing till the child was born, makes the adviser as much a felon, as if he had given his advice after the birth. 2 Haw. 315.

III. Of accessories after the fact.

Accessory after. *Accessory after the fact is, where a person knowing the felony to be committed by another, relieves, comforts, or assists the felon.* 1 H. H. 618.

Knowing the felony to be committed] There can be no doubt, but that it is necessary that the receiver have notice of the felony, either express or implied, and so to be laid in the indictment, that the receiver *knew* that the person received by him, had committed the principal felony. 2 Haw. 319.

The felony] This, as hath been said, holds place only in felonies, and in those felonies, where by the law judgment of death regularly ought to issue; and therefore not in petit larceny. 1 H. H. 618.

And therefore if a person do barely receive, comfort, or conceal an offender guilty of any common trespass, or inferior crime of the like nature, tho' he know him to have been guilty, and that there is a warrant out against him, yet he is not an accessory to the offence; but perhaps in such case he may be indictable for a contempt of the law, in hindring the due course of justice. 2 Haw. 311.

Relieves, comforts, or assists the felon] In the explication of these words, several things are considerable;

(1.) Generally, any assistance whatsoever given to one known to be a felon, in order to hinder his being apprehended, or tried, or suffering the punishment to which he is condemned, is sufficient to bring a man within this description, and make him accessory to the felony; as where one assists him with a horse to ride away with, or with money or victuals to support him in his escape. 2 Haw. 317.

(2.) But if a man knows that a person hath committed a felony, but doth not discover it, this doth not make him an accessory, but it is a misprision of felony, for which he may be indicted, and upon his conviction fined and imprisoned. 1 H. H. 618.

(3.) Also if a man sees another commit a felony, but consents not, nor yet takes care to apprehend him or to levy hue and cry after him, or upon hue and cry levied doth not pursue him; this is a neglect punishable by fine and imprisonment, but it doth not make him an accessory. 1 H. H. 618.

(4.) In like manner, if one commit a felony, and come to a person's house before he be arrested, and such person suffer him to escape without arrest, knowing him to have committed a felony, this doth not make him accessory; but if he take money of the felon to suffer him to escape, this makes him accessory: And so it is if he shut the fore door of his house, whereby the pursuers are deceived, and the felon hath opportunity to escape, this makes him an accessory; for here is not a bare omission, but an act done by him to accommodate the felon's escape. 1 H. H. 619.

(5.) Also

Accessory.

5

(5.) Also it seems to be settled at this day, that whosoever rescues a felon from an arrest for the felony, or voluntarily suffers him to escape, is an accessory to the felony. 2 *Haw.* 318.

(6.) But if a felon be in prison; he that relieves him with necessary meat, drink, or cloaths, for the sustentation of life, is not accessory. 1 *H. H.* 620.

(7.) So if he be bailed out; it is lawful to relieve and maintain him, for he is still in some sort in custody, and is under a certainty of coming to his trial. 1 *H. H.* 620.

(8.) But if a felon be in gaol; for a man to convey instruments to him to break prison to make an escape, or to bribe the gaoler to let him escape, makes the party an accessory; for tho' common humanity allows every man to afford such persons necessary relief, yet common justice prohibits all unlawful attempts to cause their escapes. 1 *H. H.* 621.

(9.) The sending a letter in favour of a felon, or advising to labour witnesses not to appear, makes no accessory; but it is a high contempt. *Hale's Pl.* 219.

(10.) A man may be accessory to an accessory, by the receiving of him, knowing him to be an accessory to felony. 1 *H. H.* 622.

(11.) If a man hath goods stolen, and he receives his goods again, simply, without any contract to favour the felon in his prosecution, this is lawful; but if he receive them upon agreement not to prosecute, or to prosecute faintly, this is theftbote, punishable by imprisonment and ransom, but yet it makes him not an accessory; but if he take money of him to favour him, whereby he escapes, this makes him accessory. 1 *H. H.* 619.

(12.) And if any person shall receive or buy stolen goods, knowing them to be stolen; or shall receive, harbour, or conceal the thieves; he shall be deemed an accessory, and be transported for fourteen years. 3 *W. c. 9. s. 4.* 5 *Ann. c. 31. s. 5.* 4 *Geo. c. 11.* And buying the goods at an undervalue, is a presumptive evidence, that he knew they were stolen. 1 *H. H.* 619.

(13.) It seems agreed, that the law hath such a regard to that duty, love, and tenderness, which a wife owes to her husband, as not to make her an accessory to felony by any receipt given to her husband; yet if she be any way guilty of procuring her husband to commit it, it seems to make her an accessory before the fact, in the same manner as if she had been sole. Also it seems agreed, that no other relation, besides that of a wife to her husband, will exempt the receiver of a felon from being an accessory to the felony; from whence it follows, that if a master receive a servant, or a servant a master, or a brother a brother, or even a husband a wife, they are accessories in the same manner as if they had been mere strangers to one another. 2 *Haw.* 320.

(14.) But if the wife alone, the husband being ignorant of it, do receive any other person being a felon; the wife is accessory, and not the husband. 1 *H. H.* 621.

(15.) But if the husband and wife both receive a felon knowingly, it shall be judged only the act of the husband, and the wife shall be acquitted. 1 *H. H.* 621.

IV. How they are to be proceeded against.

Accessaries how
farailable.

1. By 3 Ed. 1. c. 15. Those who are *accused of the receipt of felons, or of commandment, or of force, or of aid of felony done, shall beailable*; but this seemeth to be only where it stands indifferent whether the party be guilty or innocent; for if there are strong presumptions of guilt, it seemeth that he is notailable. 2 Harw. 102.

In what county
to be tried.

2. Where a person is feloniously stricken or poisoned in one county, and dies thereof in another county, the accessory may be indicted in the county where the death shall happen. 2 & 3 Ed. 6. c. 24. s. 2, 3.

The same.

3. Where a murder or felony shall be committed in one county, and a person shall be accessory in another county, the accessory may be indicted in the county where he was accessory: And the judges of assize, or two of them, of the county where the offence of the accessory shall be committed, on suit to them made, shall write to the keeper of the records where the principal shall be convicted, to certify them whether such principal be attainted, convicted, or otherwise discharged; which he shall certify under his seal. 2 & 3 Ed. 6. c. 24. s. 4.

Accessory and
principal in the
same indictment.

4. The accessory may be indicted in the same indictment with the principal, and that is the best and most usual way; but he may be indicted in another indictment, but then such indictment must contain the certainty and kind of the principal felony. 1 H. H. 623.

Principal to be
first tried.

5. It seemeth that the accessory may be put to answer before the principal hath appeared; but his plea cannot be tried before such appearance, unless he desires it himself; but if he will put himself upon his trial, before the principal be tried, he may; and his acquittal or conviction, upon such trial, is good. 2 Harw. 322. 1 H. H. 623.

But it seemeth necessary in such case to respite judgment, till the principal be convicted; for if the principal be after acquitted, that conviction of the accessory is annulled, and no judgment ought to be given against him: But if he be acquitted of the accessory, that acquittal is good, and he shall be discharged. 1 H. H. 623, 624.

Both tried by
one inquest.

6. It seems to be settled at this day, that if the principal and accessory appear together, and the principal plead the general issue, the accessory shall be put to plead also; and that if he likewise plead the general issue, both may be tried by one inquest; but that the principal must be first convicted; and that the jury shall be charged, that if they find the principal not guilty, they shall find the accessory not guilty. But it seems agreed, that if the principal plead a plea in bar, or abatement, or a former acquittal, the accessory shall not be forced to answer, till that plea be determined; for if it be found for the principal, the accessory is discharged; if against the principal, yet he shall after plead over to the felony, and may be acquitted. 2 Harw. 323. 1 H. H. 624.

Accessory.

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7. Anciently, the accessory could not be tried, unless the principal were *attainted* (13 Ed. 1. c. 14.) but by the 1 Ann. Stat. 2. c. 9. s. 1. If the principal be convicted, or stand mute, or peremptorily challenge above twenty of the jury, the accessory may be tried and punished as if the principal had been attainted; and this, altho' the principal be admitted to his clergy, pardoned, or otherwise delivered before attainder.

Accessory may be tried, tho' the principal be not attainted.

8. But in the case of stolen goods, if the principal cannot be taken, the buyer or receiver may be prosecuted as for a misdemeanor, to be punished by fine and imprisonment, or other such corporal punishment as the court shall think fit, altho' the principal be not convicted; which shall exempt the offender from being punished as accessory, if the principal be afterwards taken and convicted. 1 Ann. Stat. 2. c. 9. s. 2. 5 Ann. c. 31. s. 6.

Receiver of stolen goods may be tried before the principal.

9. It seemeth not reasonable, where a person is charged as accessory to more than one principal, to try him on the conviction of one, before all of them have appeared; because hereby he may be subject to the hardship and hazard of two trials for his life for the same offence, which is contrary to the general course of the law. 2 Harw. 323.

Case where a person is charged as accessory to more than one.

10. If the principal be erroneously attaint, yet the accessory shall be put to answer, and shall not take advantage of the error in that attainder; but the principal reversing the attainder, reverseth the attainder of the accessory. 1 H. H. 625.

Case where the principal is erroneously attainted.

11. If one person be indicted as principal, and another as accessory, and both be acquit; yet the person indicted as accessory may be indicted as principal, and the former acquittal as accessory is no bar. 1 H. H. 625.

Accessory acquitted may be indicted as principal.

12. But if a person be indicted as principal and acquitted; he shall not be indicted as accessory before: And if he be, he may plead his former acquittal in bar, for it is in substance the same offence. 1 H. H. 626.

Principal acquitted may not be indicted as accessory before.

13. But if he be indicted as principal, and acquitted; he may be indicted as accessory after, for they are offences of several natures. 1 H. H. 626.

Principal acquitted may be indicted as accessory after.

14. And so it is, if he be indicted as accessory before, and acquitted; yet for the same reason he may be indicted as accessory after. 1 H. H. 626.

Accessory before, acquitted, may be indicted as accessory after.

Indictment of an accessory before the fact, taken from *Coke's* report of Lord *Sanchar's* case, 9 Co. 117. which, as the prosecution was by the king's special command, was probably drawn by good advice; and on which *Robert Creighton*, esquire, (Lord *Sanchar* of Scotland) was convicted and hanged; viz.

Middlesex. **T**HE jurors do present for the Lord the King upon their oath, That whereas Robert Carliel late of London, yeoman, and James Irweng late of London aforesaid, yeoman, not having God before their eyes, but seduced by the instigation

of the devil, the eleventh day of May in the year of the reign of our Lord James by the grace of God of England, France, and Ireland, King, defender of the faith, and so forth, the tenth, and of Scotland the forty-fifth, at London, that is to say, in the parish of St. Dunstan in the West, and in the Ward of Farringdon without London aforesaid, &c. with force and arms, &c. feloniously and of their aforethought malice, in and upon one John Turner then and there in the peace of God and of the said Lord the King being, made an assault and affray, and the aforesaid Robert Carliel a certain gun [tormentum] called a pistol, of the value of 5 s. then and there charged with gunpowder and a leaden bullet, which gun the said Robert Carliel in his right hand then and there had and held, in and upon the aforesaid John Turner then and there feloniously, voluntarily, and of his malice forethought, did shoot off and discharge; and the aforesaid Robert Carliel, with the leaden bullet aforesaid from the gun aforesaid then and there shot and discharged, the aforesaid John Turner in and upon the left part of the breast of him the said John Turner, near the left pap of him the said John Turner, then and there feloniously struck, giving to the said John Turner then and there with the leaden bullet aforesaid out of the gun aforesaid then and there shot off and discharged, in and upon the left part of the breast of him the said John Turner, one mortal wound of the breadth of half an inch, and depth of five inches, of which mortal wound the aforesaid John Turner at London aforesaid, in the parish and ward aforesaid, instantly died: And that James Irweng feloniously, and of his forethought malice, then and there was present, aiding, assisting, abetting, comforting and maintaining the aforesaid Robert Carliel to the felony and murder aforesaid in form aforesaid to be done and committed; and so the aforesaid Robert Carliel and James Irweng the aforesaid John Turner at London aforesaid, in the parish and ward aforesaid, in manner and form aforesaid, feloniously, voluntarily, and of their forethought malice, killed and murdered, against the peace of the Lord the now King, his crown and dignity; And that one Robert Creighton, late of the parish of St. Margaret in Westminster in the county of Middlesex, esquire, not having God before his eyes, but being seduced by the instigation of the devil, before the felony and murder aforesaid by the aforesaid Robert Carliel and James Irweng in manner and form aforesaid done and committed, that is to say, the tenth day of May in the year of the reign of our Lord James, by the grace of God of England, France, and Ireland, King, defender of the faith, and so forth, the tenth, and of Scotland the forty-fifth, the aforesaid Robert Carliel, at the aforesaid parish of St. Margaret in Westminster aforesaid, in the county of Middlesex aforesaid, to the felony and murder aforesaid, in manner and form aforesaid to be done and committed, maliciously, feloniously, voluntarily and of his forethought malice, did incite, move, abet, counsel and procure; against the peace of the said Lord the King that now is, his crown and dignity.

If after the fact, then the form may be thus;

*And that A. O. late of in the county of yeoman,
well knowing the said (offender) to have done and committed the said
felony in manner and form aforesaid, afterwards, to wit, on the
 day of in the year of the reign of
 at aforesaid in the county aforesaid, with force
and arms, him the said did then and there feloniously,
and of his malice forethought, receive, aid, and comfort; against
the peace of the said Lord the King that now is, his crown and
dignity.*

Action popular. See Information.

Adultery. See Lewdness.

Addition.

TO prevent the inconvenience of troubling one person for another, it is enacted by 1 H. 5. c. 5. that in every original writ of actions personal, appeals, and indictments, in which the exigent shall be awarded, to the names of the defendants additions shall be made, of their estate or degree or mystery, and of the towns, or hamlets, or places, and counties, of the which they were, or be: And if by process upon the said original writs, appeals, or indictments, in the which the said additions be omitted, any outlawries be pronounced, they shall be void; and before the outlawries pronounced, the said writs and indictments shall be abated by the exception of the party.

In which the exigent shall be awarded] Therefore this act extendeth not to an indictment for incroaching on a highway; because in that case, process of outlawry lieth not, but a distress. Cro. Eliz. 148.

To the names of the defendants] Regularly by the common law, every natural man, having no name of dignity, ought to be named in all originals and other suits by his christian name and surname, and that, before this act, sufficed; but if he had a name of inferior dignity (as knight, or banneret) he ought to be named by his christian name and surname, and by the addition of his name of dignity. 2 Inst. 666.

If there be a corporation of one sole person, that hath a fee simple, and may have a writ of right, he may be named by the common law by his christian name without any surname, as John Bishop of P. 2 Inst. 666.

If it be a corporation aggregate of many able persons, as mayor and commonalty, dean and chapter, the mayor or dean need not be named by his christian name, because that such a corporation standeth

Addition.

standeth in lieu both of the christian name and surname. 2 *Inst.* 666.

A duke, marquiss, earl, viscount, or baron might by the common law be named by his christian name, and by the name of his dignity; as *John Duke of M.* 2 *Inst.* 666.

Additions shall be made] The addition as well of the estate, degree, or mystery, as the town, hamlet, or place, ought by force of this act to be alledged in the first name; for an addition after the *alias dictus* is ill: As for instance, where the indictment was against *W. R.* otherwise called *W. R. of H.* for without the *alias dictus* there is no addition of the vill; and if the party is not sufficiently named in the first part, the *alias* cannot aid or help it. 2 *Inst.* 669. 3 *Salk.* 20.

Where there are several defendants of different names, and the same addition, it is safest to repeat the addition after each of their names, applying it particularly to every one of them. 2 *Haw.* 187.

Where a father hath the same name and the same addition with a defendant being his son, the action is abateable unless it add the addition of *the younger* to the other additions; but where the father is the defendant, it is said that there is no need of the addition of *the elder.* 2 *Haw.* 187.

Of their estate or degree] Esquire is a good addition; and the sons of all peers and lords of parliament in the life of their fathers, are in law esquires, and so to be named. Also the eldest son of a knight is an esquire. 2 *Inst.* 667.

And it seems clear, that no one can be well described by the addition of a temporal dignity of any other nation besides our own; because no such dignity can give a man a higher title here, than that of an esquire. 2 *Haw.* 187.

Gentleman and gentlewoman are good additions; and if a gentlewoman be named spinster, she may abate and quash the writ or indictment. 2 *Inst.* 668.

A gentleman by reputation, that is neither gentle by birth, nor by office, nor by creation, but commonly called gentleman, and known by that name, is a sufficient addition; but if he be named yeoman, he cannot quash the indictment. 2 *Inst.* 668.

Lord *Coke* says, he that hath taken any degree in either of the universities, may be named by that degree without question. 2 *Inst.* 668. But this is doubted by others. 2 *Haw.* 187.

Clerk is a good addition of a clergyman. 2 *Inst.* 668.

Yeoman and labourer are good additions, and are applied only to the man, and not to the woman. 2 *Haw.* 188.

Widow or singlewoman, or (as some say) wife of such a one, are all of them good additions of the estate and degree of a woman; but no such like addition is good, for the estate and degree of a man. And spinster is a good addition for the estate and degree of a woman, and perhaps also for that of a man. 2 *Haw.* 188.

Addition.

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Or mystery] This includeth all lawful arts, trades, and occupations, as taylor, merchant, mercer, parish clerk, schoolmaster, husbandman, labourer, and the like. 2 *Haw.* 188.

But servant, groom, or farmer, are not additions within this act, because they are not of any mystery. And chamberer, butler, pantler, or the like, are additions of offices, and not of any mystery or occupation. 2 *Inst.* 668.

Neither doth this act extend to unlawful practices, as extortioner, maintainer, thief, vagabond, heretick, and such like. 2 *Haw.* 188.

If a man have divers arts, trades, or occupations, he may be named by any of them; but if a gentleman by birth be a tradesman, he shall not be named by his trade, but by the degree of gentleman, because it is worthier than the addition of any mystery. And in general a man shall be named by his worthiest title of addition. 2 *Inst.* 668, 669.

And of the towns or hamlets] If there be two towns in a county of the same principal name, with different additions to distinguish them from one another, as *Great Dale* and *Little Dale*, or *Upper Dale* and *Lower Dale*, and the defendant be named only of the principal town without any addition, as of *Dale* only, the defendant may plead that there are two *Dales* in the same county, and none without an addition. But if there be two towns of the same name in a county, without any addition to distinguish them, it may be sufficient in such case to name the defendant generally of either of such towns, without adding any thing to distinguish it from the other. 2 *Haw.* 189.

If the defendant live in a hamlet of a town, it is said to be in the election of the party to name him either of the hamlet or of the town. 2 *Haw.* 189.

But the addition of a parish, if there be two or more towns in it, is not good; but if there be but one town, the addition of parish is good. 2 *Inst.* 669.

The addition of the place of habitation of a wife, is sufficiently shewn, by shewing that of the husband; because it shall be intended that the wife lives where the husband does. 2 *Haw.* 190.

Or places] If the defendant lives in a place known by a special name, and lying out of any town or hamlet, he may be well named of such place; but if he live in any place known within a town or hamlet, it is said to be safest to name him of the town or hamlet. 2 *Haw.* 189, 190.

Of the which they were, or be] The addition of the estate, degree, or mystery, ought to be as the defendant was of at the day of the indictment brought, and not *late* of such a degree or mystery; but it is a good addition to name the defendant *late* of such a town or place, because men do often remove their habitation. 2 *Inst.* 670.

Shall be void] This being a judgment in law, is interpreted to be made void by a writ of error, or by the plea of the party coming in upon a *capias utlagatum*; for tho' the statute saith they shall

Affray.

shall be void, yet they are but voidable by a writ of error or plea. 2 *Inst.* 670.

By the exception of the party] But if the defendant appeareth upon process, and plead, taking no advantage thereof by exception, he hath lost the benefit hereof: But it seemeth that the bare appearance of the party, without plea, doth not salve the want of a good addition. 2 *Haw.* 190.

Advertisement. See Stamps.

Affray.

- I. *What is an affray.*
- II. *How far it may be suppressed by a private person.*
- III. *How far by a constable.*
- IV. *How far by a justice of the peace.*
- V. *Punishment of an affray.*

I. *What is an affray.*

1. **A**N affray is a publick offence to the terror of the King's subjects, and is an English word, and so called, because it affrighteth and maketh men afraid. 3 *Inst.* 158.

2. From whence it seemeth clearly to follow, that there may be an assault, which will not amount to an affray; as where it happens in a private place, out of the hearing or seeing of any, except the parties concerned, in which case it cannot be said to be to the terror of the people. 1 *Haw.* 134.

3. Also it is said, that no quarrellsome or threatening words whatsoever, shall amount to an affray; and that no one can justify laying his hands on those who shall barely quarrel with angry words, without coming to blows; yet it seemeth, that the constable may, at the request of the party threatned, carry the person who threatens to beat him, before a justice in order to find sureties. 1 *Haw.* 135.

4. Also, it is certain, that it is a very high offence to challenge another, either by word or letter, to fight a duel, or to be the messenger of such a challenge; or even barely to endeavour to provoke another to send a challenge, or to fight; as by dispersing letters to that purpose, full of reflections, and insinuating a desire to fight. 1 *Haw.* 135.

5. But altho' no bare words, in the judgment of law, carry in them so much terror as to amount to an affray, yet it seems certain, that in some cases there may be an affray, where there is no actual violence; as where a man arms himself with dangerous and unusual

unusual weapons, in such a manner as will naturally cause a terror to the people ; which is said to have been always an offence at the common law, and is strictly prohibited by statute : For by 2 Ed. 3. c. 3. it is enacted, that *no man of what condition soever, except the King's servants in his presence, and his ministers in executing their office, and such as be in their company assisting them, and also upon a cry made for arms to keep the peace, shall come before the King's justices, or other of the King's ministers doing their office, with force and arms, nor bring any force in affray of peace, nor go nor ride armed, by night or day, in fairs or markets, or in the presence of the King's justices, or other ministers, or elsewhere ; upon pain to forfeit their armour to the King, and their bodies to prison at the King's pleasure. And the King's justices in their presence, sheriffs and other ministers in their bailiwicks, lords of franchises and their bailiffs in the same, and mayors and bailiffs of cities and boroughs within the same, and borough-holders, constables, and wardens of the peace within their wards, shall have power to execute this Act. And the judges of assize may punish such officers as have not done their duty herein.*

Upon a cry made for arms to keep the peace] It is holden upon these words of exception, that no person is within the intention of this statute, who arms himself to suppress dangerous rioters, rebels, or enemies, and endeavours to suppress or resist such disturbers of the peace and quiet of the realm. 1 Harw. 136.

In affray of peace] *En effrayer de la pees* ; Lord Coke has it *pais*, of the country, or the people ; and so, he observes, that the writ grounded upon this statute saith, *In quorundam de populo terrorem* ; and therefore the printed book, *in affray of peace*, ought to be amended. 3 Inst. 158.

And it is holden upon these words, that no wearing of arms is within the meaning of this statute, unless it be accompanied with such circumstances as are apt to terrify the people ; from whence it seems clearly to follow, that persons of quality are in no danger of offending against this statute, by wearing common weapons, or having their usual number of attendants with them, for their ornament or defence, in such places, and upon such occasions, in which it is the common fashion to make use of them, without causing the least suspicion of an intention to commit any act of violence, or disturbance of the peace. 1 Harw. 136.

Nor to go nor ride armed] It is holden, that a man cannot excuse the wearing such armour in publick, by alledging that such a one threatned him, and that he wears it for the safety of his person from his assault ; but it hath been resolved, that no one shall incur the penalty of the said statute for assembling his neighbours and friends in his own house, against those who threaten to do him any violence therein, because a man's house is his castle. 1 Harw. 136.

Their bodies to prison] The statute of 20 R. 2. c. 1. adds a fine likewise.

Wardens of the peace] It is holden, that any justice of the peace, or other person who is impowered to execute this statute, may proceed thereon *ex officio*; and if he find any person in arms, contrary to the form of the statute, he may seize the arms, and commit the offender to prison; and that he ought also to make a record of the whole proceeding, and certify the same into the exchequer. 1 *Haw.* 135.

II. *How far it may be suppressed by a private person.*

1. It seems agreed, that any one who sees others fighting, may lawfully part them, and also stay them till the heat be over, and then deliver them to the constable to be carried before a justice, to find sureties for the peace. 1 *Haw.* 136.

2. And the law doth encourage him hereunto; for if he receives any harm by the affrayers, he shall have his remedy by law against them; and if the affrayers receive hurt, by the endeavouring only to part them, the standers-by may justify the same, and the affrayers have no remedy by law. 3 *Inst.* 158.

3. But if either of the parties be slain, or wounded, or so stricken that he falleth down for dead; in that case the standers-by ought to apprehend the party so slaying, wounding, or striking, or to endeavour the same by hue and cry; or else for his escape they shall be fined and imprisoned. 3 *Inst.* 158.

III. *How far by a constable.*

1. It seems agreed, that a constable is not only impowered, as all private persons are, to part an affray which happens in his presence; but is also bound at his peril to use his best endeavours to this purpose; and not only to do his utmost himself, but also to demand the assistance of others, which if they refuse to give him, they are punishable with fine and imprisonment. 1 *Haw.* 137.

2. And it is said, that if a constable see persons either actually engaged in an affray, as by striking or offering to strike, or drawing their weapons, or the like; or upon the very point of entering upon an affray, as where one shall threaten to kill, wound, or beat another, he may either carry the offender before a justice, to find sureties for the peace, or he may imprison him of his own authority for a reasonable time, till the heat shall be over, and also afterwards detain him till he find such surety by obligation: But it seems, that he has no power to imprison such an offender in any other manner, or for any other purpose; for he cannot justify the committing an affrayer to gaol, till he shall be punished for his offence: And it is said, that he ought not to lay hands on those, who barely contend with hot words, without any threats of personal hurt; and that all which he can do in such case, is to command them under pain of imprisonment to avoid fighting. 1 *Haw.* 137.

3. But he is so far intrusted with a power over all actual affrays, that tho' he himself is a sufferer by them, and therefore liable to be objected against, as likely to be partial in his own cause, yet he

he may suppress them; and therefore, if an assault be made upon him, he may not only defend himself, but also imprison the offender, in the same manner as if he were no way a party. 1 *Haw.* 137.

4. And if an affray be in an house, the constable may break open the doors to preserve the peace; and if affrayers fly to an house, and he follow with fresh suit, he may break open the doors to take them. 1 *Haw.* 137.

5. But it is said, that a constable hath no power to arrest a man for an affray done out of his own view, without a warrant from a justice, unless a felony were done, or likely to be done; for it is the proper business of a constable to preserve the peace, and not to punish the breach of it. 1 *Haw.* 137.

IV. How far by a justice of the peace.

There is no doubt, but that he may and must do all such things to that purpose, which a private man or constable are either enabled or required by the law to do: But it is said, that he cannot without a warrant authorize the arrest of any person for an affray out of his own view; yet it seems clear, that in such case he may make his warrant to bring the offender before him, in order to compel him to find sureties for the peace. 1 *Haw.* 137.

V. Punishment of an affray.

All affrays in general are punishable by fine and imprisonment. 1 *Haw.* 138.

And they are inquirable in the leet, as common nuisances. 3 *Inst.* 158.

Warrant to apprehend affrayers.

Westmorland. } To the constable of——

WHEREAS A. J. of——yeoman, hath this day made oath before me J. P. esquire, one of his majesty's justices of the peace for the said county, that on the——day of——in the——year of the reign of——A. O. of——yeoman, and B. O. of——yeoman, at——in the said county, in a tumultuous manner made an affray, wherein the person of the said A. J. was beaten and abused by them the said A. O. and B. O. without any lawful or sufficient provocation given to them by the said A. J. These are therefore to command you forthwith to apprehend the said A. O. and B. O. and bring them before me, or some other of his said Majesty's justices of the peace for the said county, to answer the premisses, and to find sureties as well for their personal appearance at the next general quarter-sessions of the peace to be holden for the said county, then and there to answer to an indictment to be preferred against them by the said A. J. for the said offence, as also for their keeping the peace in the mean time, towards his said Majesty and all his liege people, and especially towards him the said A. J. Hereof fail not,
as

Affray.

as you will answer the contrary at your peril. Given under my hand and seal at ——— in the said county, the ——— day of, &c.

Indictment for an affray.

THE jurors for our Lord the King, upon their oath present, that A. O. of ——— in the county of ——— taylor, and B. O. of ——— in the said county, blacksmith, with force and arms, on the ——— day of ——— in the ——— year of the reign of our sovereign Lord George the second, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth, at ——— aforesaid in the county aforesaid, being arrayed and unlawfully assembled together in a warlike manner, did make an affray, to the terror and disturbance of divers of the subjects of our said sovereign Lord the King then and there being, and to the evil example of all other the subjects of our said sovereign Lord the King, and against the peace of our said Lord the King, his crown and dignity.

Alamodes. See Silks.

Ale and Beer. See Excise.

Alehouses.

Alehouses.

For matters relating to the *excise* of beer and ale, see title *Excise*.

- I. Concerning inns and alehouses in general.
- II. Selling ale without licence.
- III. Licensing alehouses.
- IV. Recognizance, and forfeiture thereof.
- V. To what places the licence shall extend.
- VI. How long the licence shall continue in force.
- VII. Offences in brewing of ale.
- VIII. Innkeepers obliged to receive guests.
- IX. Soldiers quartered in alehouses.
- X. Concerning ale vessels, and the measure of ale.
- XI. Conspiring to enhance the price of ale.
- XII. Selling in vessels of plate.
- XIII. Innkeeper suffering tipling.
- XIV. Persons guilty of tipling.
- XV. Concerning drunkenness.
- XVI. Detaining goods for the reckoning.
- XVII. Goods of a guest stolen out of an inn.
- XVIII. Guests stealing goods.

I. Concerning inns and alehouses in general.

1. **E**VERY inn is not an alehouse, nor is every alehouse an inn : but if an inn uses common selling of ale, it is then also an alehouse ; and if an alehouse lodges and entertains travellers, it is also an inn. Difference between inns and alehouses.

2. It was resolved by all the judges, that any person might erect an inn to lodge travellers, without any licence or allowance for such erection. *Dalt. c. 56. Black. 170.* Licence to erect inns.

3. But it seems to be agreed, that the keeper of an inn may by the common law be indicted and fined, as being guilty of a publick nuisance, if he usually harbour thieves, or persons of scandalous reputation, or suffer frequent disorders in his house, or take exorbitant prices, or set up a new inn in a place where there is no manner of need of one, to the hindrance of other ancient and well governed inns, or keep it in a place in respect of its situation wholly unfit for such a purpose. *1 Harw. 225.* Inn indictable.

Innkeeper selling
ale.

4. And if an inn useth the trade of an alehouse, as almost all innkeepers do, it shall be within the statutes made about alehouses. *Dalt.* 133. *Black.* 170.

Inn to be li-
censed.

5. It hath been also agreed for law, that innkeepers ought to have licence, and be bound by recognizance for keeping good order, as alehousekeepers are. *Dalt.* 24.

Power of justices
by the commis-
sion.

6. By the commission of the peace, two justices (1 2.) may inquire of innholders, and of all and singular other persons, who shall offend in the abuse of weights or measures, or in the sale of victuals, against the form of the ordinances in that behalf made.

II. Selling ale without licence.

Here are three methods of proceeding against an offender, (1) by the justices in sessions, (2) by two justices out of sessions, and (3) by one justice out of sessions.

By the justices in
sessions.

1. By the justices in sessions:—*The justices of the peace, or two of them at the least (1 2.) shall have full power and authority, to remove, discharge, and put away common selling of ale and beer in common alehouses and tipling houses, in such towns and places where they shall think meet and convenient.* 5 & 6 Ed. 6. c. 25. f. 1.

But this must be understood of houses unlicensed only. 1 *Salk.* 46.

And by this clause the justices in their sessions have power to suppress such unlicensed alehouses, and need not proceed by information or conviction; but they have thereby a discretionary power to suppress them, without shewing any cause or misdemeanor. *L. Ray.* 1303.

And here it is to be observed, that there is a difference between suppressing an unlicensed alehouse, and one that is licensed. Where an alehouse is licensed, the justices, to suppress it, must either proceed upon the recognizance, the condition whereof must at least be broken; and therefore his having another trade, or being a bailiff, can be no cause in such case: or by indictment, and then there must be such disorders as prove a nuisance. But where an alehouse is unlicensed, the justices may suppress it at discretion; for on the denial of a licence no appeal lies, and this statute which gives the justices a power to suppress *where they shall think convenient*, would signify nothing if it did not extend to such cases; for it cannot extend to alehouses that are licensed, because they are not punishable without a breach of the recognizance. And as to those that are unlicensed, if they be suppressed, the want of a licence can only come in question in such case, and not the reason and cause why it was denied. 1 *Salk.* 45, 46.

By two justices
out of sessions.

2. Next, by two justices out of the sessions:—If any person unlicensed, shall obstinately, and upon his own authority, take upon him to keep a common alehouse or tipling house, or shall contrary to the commandment of the said justices, or two of them, use commonly selling of ale and beer (except in fairs); the said justices or two of them (1 2.) shall for every such offence com-

mit every such person so offending to the common gaol, there to remain without bail or mainprize for three days :

And before his deliverance, the said justices shall take recognizance of him, with two sureties, that he shall not keep any common alehouse or tipling house, or use commonly selling of ale or beer, as by the discretion of the said justices shall seem convenient :

And the said justices shall make certificate of every such recognizance and offence, at the next quartersessions; which certificate shall be a sufficient conviction of the same offence :

And the justices, upon the said certificate made, shall in open sessions assess the fine for every such offence at 20 s. 5 & 6 Ed. 6. c. 25. s. 4, 5.

3. Next, as to the method of proceeding by one justice: This may be either by the statute of the 3 C. c. 3. or by the statute of the 26 G. 2. c. 31. By one justice, on the 3 C. c. 3.

The method of proceeding on the 3 C. c. 3. is as follows: If any person shall, upon his own authority, not being thereunto lawfully licensed, take upon him to keep a common alehouse or tipling house, or use commonly selling of ale or beer, cyder or perry (except in fairs); he shall for the first offence forfeit 20 s. to the poor; the same offence being viewed by any mayor or justice, or confessed by the offender, or proved by the oath of two witnesses: To be levied by the constables or churchwardens by warrant of distress; and for default of satisfaction in three days, the distress to be appraised and sold, rendring the overplus: And if he have not sufficient goods whereon to levy, or shall not pay the 20 s. in six days after conviction, such mayor or justice shall commit him to the constable or other inferior officer, where the offence shall be committed, or the party apprehended, to be openly whipped for the said offence, as the said justice shall appoint: And if the constable, or other inferior officer, shall neglect to execute the said precept or warrant, or do refuse, or do not execute the punishment by himself or some other; the said mayor or justice may commit him to the common gaol, till the offender shall be punished and whipped by himself or some by his procurement, or until he hath paid the sum of 40 s. to the poor for his contempt. For the second offence, the said mayor or justice shall commit such person keeping an alehouse without licence, to the house of correction, for one month, and to be dealt with as an idle, lewd, and disorderly person. And if he shall again offend, he shall, on conviction as aforesaid, be committed in like manner to the house of correction, there to remain until by the order of the justices in sessions he shall be delivered from thence. But he shall not be punished both upon this act, and upon the 5 & 6 Ed. 6. but upon one of them only.

The other method of proceeding by one justice, is on the statute of the 26 Geo. 2. c. 31. and is as follows: By one justice, on the 26 G. 2. c. 31.

Where any justice shall suspect that any person sells without licence, he may call him before him, and also any excise officer or gauger to produce his stock book or other account of the charge or survey of such suspected person, and may examine such officer

Alehouses.

on oath in what manner he charges such person, and how such person pays the duties; and if it shall appear by such stock book or account, or oath of the officer, that such person is surveyed as a victualler or retailer, and is charged with the same duties that victuallers and retailers are charged with and pay for any the liquors aforesaid, and is not intitled to the allowance or abatement given to common brewers, he shall be deemed an alehousekeeper, victualler, retailer, or seller thereof, as if it had been proved by two witnesses. S. 9.

And if any person shall make information before one justice, and shew probable cause that he suspects that any person sells without licence, the justice may call him before him (A), and summon any other person as evidence; and if the person summoned refuse to appear, or appear and refuse to give evidence upon oath, he shall forfeit 10*l.* by distress by warrant of such justice, rendering the overplus after charges of the distress and sale deducted, to be paid to the overseers for the use of the poor where the offender lives. S. 10.

And every person so convicted (B) of selling without licence, shall for the first offence forfeit 40*s.* for the second offence 4*l.* and for the third offence 6*l.* by distress and sale, rendering the overplus, after charges of distress and sale deducted, by warrant of the justice convicting the offender (C), half to the informer, and half to the poor; and if no sufficient distress shall be found, the justice shall commit him (D) to the gaol or house of correction, for one month, for the first offence; for two months, for the second; and for the third, until he shall be discharged by order of sessions. S. 12.

And any person may be a witness in such case, notwithstanding he pays to the poor of any place where the offence shall be committed. S. 17.

But persons punished by this act shall not be punished by any former act; and persons punished by any former act shall not be punished by this act. S. 14.

Note, here is no punishment by this act, nor by the former act of the 3 C. c. 3. for the fourth or any other subsequent offence; but the offender may be punished in such case by either of the former methods, *viz.* either by the justices in sessions, or by two justices out of sessions, by the 5 & 6 Ed. 6.

Penalty of selling ale to a person unlicensed.

4. By the statute of the 4 J. c. 4. If any person shall sell or deliver any beer or ale, to any person that shall then sell beer or ale as a common tipler or alehousekeeper, the same person not having licence to sell ale or beer (except it be for the use of his household only); he shall forfeit for every barrel 6*s.* 8*d.* and so proportionably for other quantities; half to the poor, and half to him that shall sue in sessions, by action of debt, information, indictment, or presentment.

III. Licensing alehouses.

1. By the 5 & 6 Ed. 6. c. 25. any two justices 1 Q. might licence alehouses; but now by the 2 G. 2. c. 28. and 26 G. 2. c. 31.

c. 31. it is enacted, that whereas many inconveniences have arisen from persons being licensed to keep inns and common alehouses, by justices, who living remote from the places of abode of such persons, may not be truly informed as to the occasion or want of such inns or common alehouses, or the characters of the persons applying for licences to keep the same; therefore from henceforth no licence shall be granted to any person to keep a common inn or alehouse, but at a general meeting of the justices acting in the division where the said person dwells, to be holden for that purpose, on the first day of *September* yearly, or within twenty days after, and not at any other time. Excepting, that this shall not alter the power or the time of granting licences, in cities and towns corporate. 2 G. 2. c. 28. s. 11, 12. 26 G. 2. c. 31. s. 4, 16.

By two justices,
at a general
meeting.

At a general meeting of the justices holden for the division] But it is not necessary to set forth specially in the licence, that it was granted at a general meeting of the justices holden for the division; and therefore a conviction for keeping an alehouse without such licence, is not good upon the evidence of the licence only, but there must be other evidence. *M. 11 G. 2. King and Bryan, Sess. Ca. Vol. 2. 183.*

2. And the day and place for granting licences shall be appointed by two or more justices for the division, by warrant (E) under their hands and seals, at least ten days before such meeting, directed to the high constables, requiring them to order (F) their petty constables, or other peace officers, to give notice to the several innkeepers and alehousekeepers within their respective constablewicks, of the day and place of such meeting. And all licences granted at any other time or place shall be void. 26 G. 2. c. 31. s. 4.

The meeting
how to be ascer-
tained.

3. And no licence shall be granted to any person not licensed the year preceding (except in cities or towns corporate) unless he produce a certificate under the hands of the minister and the major part of the churchwardens and overseers, or else of three or four reputable and substantial householders of the place, setting forth that such person is of good fame and of sober life and conversation; and it shall be mentioned in such licence that such certificate was produced, otherwise the licence shall be void. 26 G. 2. c. 31. s. 2, 16.

Certificate of
persons to be li-
censed.

4. By the 26 G. 2. c. 31. No justice of the peace, being a common brewer of ale or beer, innkeeper, or distiller, or a seller of or dealer in ale or spirituous liquors, or interested in any the said trades, or being a victualler or malster, shall be capable, or have any power to grant licences for selling ale or beer or any other liquors, but the same shall be void. S. 11.

What justices are
prohibited from
granting licen-
ces.

5. And all mayors, townclerks, and other persons whom it may concern, shall make out ale licences (G) duly stamped (on a 12 d. stamp, 9 Ann. c. 23. s. 23.) before the recognizance be taken; on pain of 10 l. half to the king, and half to the prosecutor, with costs. 6 G. c. 21. s. 56. 1 Ann. Stat. 2. c. 22. s. 6.

Stamp.

Licence for spirituous liquors.

6. And no person shall retail any distilled spirituous liquors, or strong waters, without a licence from the officer of excise taken out ten days before, for which he shall pay 40*s.* yearly. 16 G. 2. c. 8. *f.* 8. 24 G. 2. c. 40. *f.* 9.

And such persons shall be first licensed to sell ale or spirituous liquors by two or more justices of the peace. 16 G. 2. c. 8. *f.* 11.

And the justice's clerk shall have 2*s.* 6*d.* and no more, for such licence. 9 G. 2. c. 23. *f.* 14. 24 G. 2. c. 40. *f.* 28, 29.

Which said licence for retailing spirituous liquors, is treated of more at large under the article concerning spirituous liquors in title *Excise*.

Licence for made wines.

7. No person shall sell made wines, without a licence from two justices; for which he shall pay their clerk 2*s.* 6*d.* and none shall be granted but to keepers of victualling houses, inns, coffee houses, or alehouses. 10 G. 2. c. 17. *f.* 10, 11.

IV. Recognizance, and forfeiture thereof.

Recognizance.

1. On granting licences for keeping any common alehouse or tipling house, the person licensed shall enter into a recognizance in 10*l.* with two sureties in 5*l.* each, or one surety in 10*l.* (H) as well against the using of unlawful games, as also for the using and maintenance of good order and rule to be had and used within the same, as by their discretion shall be thought necessary and convenient; and if such person shall be hindred thro' sickness or infirmity, or other reasonable cause to be allowed by the justices, to attend in person, they may grant the licence, on two sureties entring into such recognizance in 10*l.* each. 5 & 6 Ed. 6. c. 25. *f.* 1. 26 G. 2. c. 31. *f.* 1.

As by their discretion shall be thought necessary and convenient] Mr. Dalton observes upon these words in the statute of 5 & 6 Ed. 6. that the matter of the condition of the recognizance is by the statute partly referred to the *discretion of the justices*. And he says, in some shires the justices have agreed upon certain articles framed by their discretion, and generally to be propounded to all common ale sellers, taking their bond for performance of the same; a copy whereof they used to deliver to every of them; which manner (he says) had been allowed.

And amongst articles of this kind, he recommends to the justices care these three especially. 1. That no alehousekeeper, upon the Lord's day, should receive or suffer to remain any persons whatsoever, as their guests, in any their houses or other places, to tipple, eat, or drink; other than travellers, and such as come upon necessary business. 2. That they suffer no person whatsoever, resorting to their houses only to eat or drink, to remain there after nine of the clock in the evening in winter, and ten in summer. 3. That they suffer no person, resorting to their houses only to eat and drink, to remain tipling there above one hour, other than travellers. *Dalt. c.* 176.

2. Which

2. Which said recognizance, with the condition thereof, fairly written or printed, shall forthwith, or at the next sessions at farthest, be sent or returned to the clerk of the peace, under the hands of the justices, to be by him entred or filed amongst the records. 26 G. 2. c. 31. f. 1. To be filed at the sessions.

3. And for every licence granted, without taking such recognizance; and for every such recognizance taken, and not sent or returned; every justice signing such licence, shall forfeit 3*l.* 6*s.* 8*d.* Penalty for licensing otherwise.
5 & 6 Ed. 6. c. 25. f. 2. 26 G. 2. c. 31. f. 1.

Which said forfeiture, for granting licences without taking recognizances, shall be to him who shall sue, together with costs. 26 G. 2. c. 31. f. 6. But it is not said who shall have the penalty for not returning the recognizance to the clerk of the peace, therefore that shall go to the king.

4. And the clerk of the peace shall keep a register or calendar of all such recognizances, and shall deliver to the justices, at the meeting for granting licences, a true copy of such register or calendar. 26 G. 2. c. 31. f. 5. Recognizances to be calendred.

5. And for every recognizance shall be paid by the clerks of the justices taking such recognizances, to the clerk of the peace for filing or recording the same, and for making and delivering the copies of the register or calendar 1*s.* which shall be paid to the clerks of the said justices, by the persons licensed, over and above the fees payable to the said justices clerks. 26 G. 2. c. 31. f. 5. Fee for the recognizance.

6. By the 5 & 6 Ed. 6. c. 25. f. 3. The justices shall have power, in their quarter sessions, by presentment, information, or otherwise by their discretion, to enquire of all such persons as shall be admitted and allowed to keep any alehouse or tipling house, and that be so bound by recognizance, if they have done any act whereby they have forfeited the same recognizance; and they shall upon such presentment or information award process against every such person so presented or complained upon before them, to shew why he should not forfeit his recognizance; and shall have power to hear and determine the same, by all such ways and means, as by their discretion shall be thought good. Process on the recognizance.

And by the 26 G. 2. c. 31. Any justice on complaint or information that such licensed person hath committed any act, whereby in the judgment of such justice the recognizance may be forfeited, or the condition broken, may by summons under hand and seal require such person to appear at the general or quarter sessions, then and there to answer to the matter of such complaint or information; and also may bind the complainant, or any other person, in a recognizance to appear and give evidence; and the sessions may direct the jury which shall there attend for the trial of traverses, or some other jury of twelve honest and substantial men, to be then and there impanelled by the sheriff without fee, to inquire thereof; and if the jury find that such person hath done any act whereby the recognizance is broken, such act being specified in such complaint or information, the court may adjudge him guilty; which verdict and adjudication shall be final; and thereupon the court shall order the recognizance to be estreated into the exchequer, to be levied to his majesty's use; and the said person shall

be disabled to sell any ale, beer, cyder, perry, or spirituous liquors for three years, and any licence granted to him for such term shall be void. S. 7. Provided that the justices, at the request of the prosecutor, or of the party complained of, or either of his sureties, may adjourn the trial to the then next sessions. S. 8.

And if any person shall be disabled, by conviction, to sell ale, beer, cyder, or perry; he shall by the same conviction be disabled to sell any spirituous liquors, any licence before obtained for that purpose notwithstanding; and every licence granted to him for selling ale, beer, cyder, perry, or spirituous liquors, shall be void; and if he shall sell during such disability, he shall be punished as for selling without licence (I); and a certificate from the clerk of the peace (which he shall grant without fee) of such conviction shall be legal evidence. *Id.* s. 11.

V. To what places the licence shall extend.

Licence restrained to the place.

1. No licence shall intitle any person to keep an alehouse in any other place, than that in which it was first kept by virtue of such licence; and such licence with regard to all other places shall be void. 26 G. 2. c. 31. s. 3.

Person dying or removing.

2. And if any licensed person shall die, or remove from an alehouse, the person succeeding to such house may keep on the same during the residue of the term; on condition, that within thirty days after such death or removal, such person obtain such certificate as aforesaid, to be signed by some neighbouring justice, in order to its being produced at the next general meeting in September; and if such certificate be not so obtained, and signed, within the said thirty days, then immediately from the expiration thereof such licence shall be void. *Id.*

VI. How long the licence shall continue in force.

For how long the licence shall be.

Such licence shall be made for one year only, to commence on Sep. 29. 26 G. 2. c. 31. s. 4.

VII. Offences in brewing of ale.

Undue mixtures in making of ale.

1. By the 1 W. Sess. 1. c. 24. s. 17. No common brewer or retailer of beer or ale, shall use in the brewing or working thereof, any melasses, coarse sugar, honey, or composition or extract of sugar; on pain of forfeiting the liquor, and also 100 l. half to the king, and half to him that shall sue in six months.

The same.

2. And by the 10 & 11 W. c. 21. s. 34. If any common brewer or retailer of beer or ale, shall use any melasses, coarse sugar, honey, or composition or extract of sugar, in the brewing, making, or working of any ale or beer; or if any common brewer shall receive into his custody any quantity of any the said materials exceeding ten pounds, he shall forfeit 100 l. to be recovered and mitigated as by the laws of excise; and the servant or other assisting therein, shall forfeit 20 l. in like manner, and in default of payment shall be imprisoned three months.

3. And

3. And by 9 *Ann. c. 12.* No common brewer, innkeeper, or victualler, shall use any broom, wormwood, or any other bitter ingredient (to serve instead of hops) in any beer or ale for sale, (except infusing the same, after it is brewed and tunned, to make broom or wormwood ale or beer;) on pain of 20*l.* half to the king, and half to the prosecutor, to be levied as by the laws of excise. *S. 24, 26.* The same.

4. And by 12 *Ann. Stat. 1. c. 2.* No common brewer, or retailer of beer or ale, shall use any sugar, honey, foreign grains, Guinea pepper, *essentia bine*, *coculus indiae*, or any unwholsome ingredients in the brewing of beer or ale, or mix any of them therewith, on pain of 20*l.* to be recovered and mitigated as by the laws of excise, half to the king, and half to him that shall sue. *S. 32.* The same.

VIII. Innkeepers obliged to receive guests.

If one who keeps a common inn, refuse either to receive a traveller as a guest into his house, or to find him victuals or lodging, upon his tendering him a reasonable price for the same; he is not only liable to render damages for the injury, in an action on the case at the suit of the party grieved, but may also be indicted and fined at the suit of the king. *1 Haw. 225.* Innkeeper obliged to receive guests.

Also it is said, that he may be compelled by the constable of the town, or by a justice of the peace, to receive and entertain such a person as his guest; and that it is no way material whether he have a sign before his door or not, if he make it his common business to entertain passengers. But how the officer may compel him may be a question: It seemeth that all the officer can do, is either to cause such alehousekeeper to be suppressed, or else to present such offence at the assizes or sessions, that so such offender may be thereupon indicted. *Dalt. c. 7.*

IX. Soldiers quartered in alehouses.

By the yearly acts against mutiny and desertion, the constable, and in his default, a justice of the peace, may quarter soldiers in inns, livery stables, alehouses, and victualling houses; as is set forth more at large in title *Soldiers.* Soldiers quartered in inns.

X. Concerning ale vessels, and the measure of ale.

1. The justices in *Easter* sessions yearly (and mayors in corporations) shall rate the price of all barrels, kilderkins, firkins, and other vessels to be sold for ale or beer to be uttered therein: And if any cooper shall not sell the same according to such rate, he shall forfeit 3*s.* 4*d.* half to the king, and half to him that shall sue. *8 El. c. 9.* Justices to rate the price of vessels.

2. Every barrel of beer, within the bills of mortality, shall be 36 gallons, and the barrel of ale 32 gallons; and in all other places, 34 gallons shall be reckoned for a barrel of beer or ale. *12 C. 2. c. 24. s. 34. 1 W. St. 1. c. 24. s. 5.* Barrel, what.

3. By

Quarts and pints
to be marked.

3. By 11 & 12 W. c. 15. which is required to be given in charge at the sessions to the grand jury, it is enacted, that all inn-keepers, alehousekeepers, sutlers, victuallers and other retailers of ale or beer, and every person keeping any publick house, and retailing and selling ale or beer, shall retail and sell the same in and from their houses, by a full ale quart or ale pint, according to the standard of the exchequer, in a vessel made of wood, earth, glass, horn, leather, pewter, or of some other good and wholesome metal, made and sized to the standard, and signed, stamped, or marked to be of the content of the said ale quart or ale pint, according to the said standard, either from the exchequer, or from some city, town corporate, borough, or market town, where a standard ale quart or pint, made from the said standard, shall be kept for that purpose; and shall not retale and utter any ale or beer, in any other vessel not signed and marked; on pain of forfeiting not above 40s. nor under 10s. for every offence, half to the poor, and half to him that shall prosecute or sue for the same, to be recovered before one justice, by the oath of one witness, and to be levied by warrant of distress, rendring the overplus, deducting thereout the reasonable charges. 11 & 12 W. c. 15. f. 1, 6. (K). The prosecution to be within thirty days. S. 6.

And moreover he shall not detain any goods for the reckoning, but shall be left to his action at law. *Id.* f. 2.

But it is not necessary that beer or ale sold to be spent out of the house, be carried away in standard measures; but it is sufficient if it be measured out by the standard. *Id.* f. 7.

Who shall mark
them.

4. And every mayor or chief officer of every city, town corporate, borough, or market town, shall on request to him made, cause all ale quarts and ale pints, made of wood, earth, glass, horn, leather, pewter, or other good and wholesome metal, which shall be brought to him, to be measured and sized with the standard in his custody, and shall then cause the same, and every of them, to be plainly and apparently signed, stamped, and marked with W R and a crown, for which they shall not receive above one farthing for each measure; on pain of 5 l. to be recovered as aforesaid, and he shall also pay to the party grieved treble damages, with costs, by action at law. 11 & 12 W. c. 15. f. 5.

Note, Most of the books do set forth that the sub-commissioners or collectors of excise shall procure standard quarts and pints out of the exchequer, for every market town; but this was only required of them before Jun. 24. 1700, and not since. S. 3.

Indictment.

5. An indictment will lie for selling ale in pots unsealed, altho' the statute appoints another method of proceeding; because measures are by the common law, and the statutes only direct the manner of ascertaining them. *Black.* 10.

But in such case, the indictment must not be upon the statute, but at the common law; and the offence ought to be laid, not for selling in pots unsealed, but in pots wanting measure.

XI. *Conspiring to enhance the price of ale.*

If any brewers shall conspire to sell their victuals but at certain prices; they shall, on conviction in the sessions or leet, by witness, confession, or otherwise, forfeit 10*l.* to the king for the first offence, and if not paid in six days, they shall be imprisoned 20 days; for the second offence, 20*l.* in like manner, or the pillory; for the third offence, 40*l.* in like manner, or the pillory, loss of an ear, and to become infamous. 2 & 3 Ed. 6. c. 15. Conspiring to raise the price.

XII. *Selling in vessels of plate.*

By 7 & 8 W. c. 19. intituled, An act to encourage the bringing plate into the mint to be coined, and for the farther remedying the ill state of the coin of the kingdom; it is enacted, that from and after May 4. 1696. no person keeping any inn, tavern, alehouse, or victualling house, or selling wine, ale, beer, or any other liquors by retale, shall publickly use, or expose to be used in his house, any wrought or manufactured plate whatsoever, or any utensil or vessel thereof (except spoons) under the penalty of forfeiting the same, or the value thereof with costs, to him who shall sue. Selling in plate.

I have recited the title of the act, that the whole may appear together; because, as the general practice seemeth now to be allowed to the contrary, perhaps it may be thought that this clause is obsolete, as having been intended only to encourage the coinage at that time, when there was great scarcity of money: But how far this may be urged on an action brought, I presume not to say.

XIII. *Innkeeper suffering tipling.*

If any innkeeper, victualler, or alehousekeeper, or tavern keeper, keeping an inn or victualling house, do suffer any person to continue drinking or tipling therein (except such as shall be invited by any traveller, and shall accompany him only during his necessary abode there; and except labouring and handicraftsmen in cities, towns corporate, and market towns, upon the usual working days, for one hour at dinner time, to take their diet in an alehouse; and except labourers and workmen, which for the following of their work by the day or by the great, in any city, town corporate, market town or village, shall for the time of their sad continuing in work there, sojourn, lodge or victual in any inn, alehouse or other victualling house; and except for urgent and necessary occasions to be allowed by two justices;) he shall, on conviction thereof before the mayor, or a justice of the peace, on view, or confession, or oath of one witness, forfeit 10*s.* to the poor. 1 J. c. 9. s. 2. 1 C. c. 4. 21 J. c. 7. Penalty of suffering tipling.

The same to be levied by the constables or churchwardens by way of distress (L); and for default of satisfaction in six days, the distress to be appraised and sold, rendring the overplus; and for want of sufficient distress, the party offending to be by such mayor

Alehouses.

mayor or justice committed (M) to the common gaol, there to remain until the penalty be truly paid. 1 J. c. 9. f. 3.

And if the constables or churchwardens do neglect their duty in levying, or do not levy the penalties; or in default of distress, do neglect to certify the default, by the space of 20 days, to such mayor or justice, every person so offending shall forfeit 40 s. to the poor, to be levied by way of distress by warrant from such mayor or justice; the distress to be detained six days; in which time if payment be not made, the goods to be appraised and sold, returning the overplus; for want of sufficient distress, the constable or churchwarden so offending, to be by such mayor or justice committed to the common gaol, there to remain until the penalty be truly paid. 1 J. c. 9. f. 4.

And moreover such alehouse-keeper shall be disabled, for the space of three years, to keep any such alehouse. 21 J. c. 7.

And also, the said offence may be inquired of and presented before justices of assize, justices of the peace in their sessions, mayors in corporations, and in the leet; and thereupon such due proceeding shall be had for the conviction, as in such like cases upon any indictment or presentment is used. 4 J. c. 5. f. 5.

And all constables, churchwardens, aleconners and fidemen, shall in their several oaths incident to their offices, be charged to present the said offence. 4 J. c. 5. f. 7.

XIV. Persons guilty of tipling.

Penalty of tipling.

1. If any person (unless those excepted under the foregoing head, by 1 J. c. 9.) shall continue drinking or tipling, in any inn, victualling house, or alehouse, or any tavern keeping an inn or victualling house; he shall, on conviction thereof before the mayor or a justice of the peace, on view, confession, or oath of one witness, forfeit for every offence 3 s. 4 d. to be paid within one week next after the conviction, to the churchwardens (N), who shall be accountable for the same to the use of the poor: And if he shall refuse or neglect to pay the same, it shall be levied by distress (O): And if he be not able to pay the forfeiture, then the mayor, justice, or court where the conviction shall be, may punish the offender, by setting him in the stocks (P) for every offence by the space of four hours. 4 J. c. 5. f. 4. 1 J. c. 9. 21 J. c. 7. 1 C. c. 4.

The said offence may also be inquired of and presented, before justices of assize, justices of the peace in sessions, mayors, and in the leet; and proceeding shall be had thereupon for the conviction, as upon indictment or presentment. 4 J. c. 5. f. 5.

The offender to be presented, indicted, or convicted in six months. 4 J. c. 5. f. 11.

And all constables, churchwardens, aleconners, and fidemen, shall in their several oaths incident to their offices, be charged to present the said offence. 21 J. c. 7. f. 5.

Alehousekeeper guilty of tipling.

2. And if any alehouse-keeper shall be convicted of the said offence, he shall moreover for the space of three years be disabled to keep any such alehouse. 7 J. c. 10. 21 J. c. 7.

XV. Concerning drunkenness.

1. Drunkenness excuseth no crime; but he who is guilty of any crime whatever, thro' his voluntary drunkenness, shall be punished for it as much as if he had been sober. *Drunkenness no excuse.* 1 *Haw.* 2.

2. If any offend their brethren by drunkenness, the churchwardens and sidemen shall present the same to the ordinary, that they may be punished by the severity of the laws, according to their deserts; and such notorious offenders shall not be admitted to the holy communion, till they be reformed. *Spiritual censure.* *Can.* 109.

And all constables, churchwardens, aleconners, and sidemen, shall be sworn to present the offence of drunkenness. 4 *J.*

c. 5. f. 7.

3. Every Person who shall be drunk, and thereof shall be convicted before one justice, or mayor, on view, confession, or oath of one witness, he shall forfeit for the first offence 5 s. to be paid within one week after conviction, to the churchwardens (Q) who shall be accountable for the same to the use of the poor; and if he shall refuse or neglect to pay the same as aforesaid, it shall be levied by distress (R); and if the offender be not able to pay the said sum of 5 s. he shall be committed to the stocks (S), there to remain by the space of six hours. *Penalty for the first offence.* 4 *J.* c. 5. f. 2. 21 *J.*

c. 7. f. 1, 3.

And if any constable, or other inferior officer to whom that shall be given in charge by the precept of any mayor or justice, do neglect the due correction of the offender, or the due levying of the penalties where distress may be had; every person so offending shall forfeit 10 s. to be levied by distress, by any other person having warrant from any mayor, justice or court, where any such conviction shall be, to be paid to the churchwardens, who shall account for the same to the use of the poor where the offence shall be committed. 4 *J.* c. 5. f. 3.

4. And if any person once convicted of drunkenness, shall after that be again convicted of the like offence, he shall be bounden with two sureties in a recognizance of 10 l. with condition to be from thenceforth of good behaviour. *Second offence.* 4 *J.* c. 5. f. 6. 21 *J.* c. 7. f. 3.

To be of good behaviour] Lord Hale, speaking of the statute of 34 *Ed.* 3. c. 1. which gave justices power to bind malefactors to the good behaviour, generally, without any time limited, says, that it is not meant that the same shall be perpetual, but in the nature of bail, viz. to appear at such a day at their sessions, and in the mean time to be of good behaviour. 2 *H. H.* 136.

5. The said offence may also be inquired of and presented before justices of assize, justices of the peace in their sessions, mayors, and in the leet; and thereupon process shall be had for the conviction, as upon indictment or presentment. *Who may inquire thereof.* 4 *J.* c. 5. f. 5.

6. But the offender shall be presented, indicted or convicted in six months. *In what time.* 4 *J.* c. 5. f. 11.

7. It is also provided, that this act shall not abridge the ecclesiastical jurisdiction. 4 J. c. 5. s. 8.

None to be twice punished for the same offence.

But when the offender hath been once punished, by any the ways before mentioned, he shall not be punished again by any other way or means. S. 9.

Alehousekeeper drunk.

8. If any alehousekeeper shall be convicted of being drunk; he shall, besides the penalties abovementioned, be utterly disabled to keep any such alehouse, for the space of three years next ensuing the conviction. 7 J. c. 10. 1 C. c. 4.

Navy.

9. Every person in his majesty's pay in the navy, being guilty of drunkenness, shall incur such punishment as a court martial shall think fit to impose. 22 G. 2. c. 33. Art. 2.

XVI. Detaining goods for the reckoning.

May detain goods.

1. Since innkeepers are bound by the law to receive guests, for that reason they may detain their goods till they are paid. 1 Salk. 388.

Guest, who.

2. Holt C. J. doubted whether a man is a guest by setting up his horse at an inn, tho' he never went into the inn himself; but the other three justices held, that such person is a guest by leaving his horse, as much as if he had staid himself, because the horse must be fed, by which the innkeeper has gain; otherwise if he had left a trunk, or a dead thing. 1 Salk. 388.

Cannot seize after the goods are gone.

3. By the custom of the realm, if a man lies in an inn one night, the innkeeper may detain his horses, until he is paid for the expences; but if he gives the party credit for that time, and lets him depart without payment, then he hath waved the benefit of the custom, and must rely on his other agreement. T. 9 G. Mod. C. in L. & E. 172.

Reckoning in particulars; and vessels to be sealed.

4. Also, if any innkeeper, alehousekeeper, victualler, or sutler, in giving any account or reckoning in writing, or otherwise, shall refuse or deny to give in the particular number of quarts or pints, or shall sell in measures unmarked; it shall not be lawful for him, for default of payment of such reckoning, to detain any goods or other thing, belonging to the person or persons from whom such reckoning shall be due, but he shall be left to his action at law for the same, any custom or usage to the contrary notwithstanding. 11 & 12 W. c. 15. s. 2.

Horse may be sold for his keeping.

5. If a person brings his horse to an inn, and leaves him in the stable there; the innkeeper may keep him till the owner pay for the keeping; and if he eat out as much as he is worth, the master of the inn, after a reasonable appraisement, may sell the horse and pay himself. Yelv. 66.

But for his own keeping only.

6. But if one bring several horses to an inn, and afterwards takes them all away but one; the innkeeper may not sell this horse for payment of the debt for the others, but every horse is to be sold to satisfy what is due for his own meat. 1 Bulst. 207, 217.

XVII. Goods of a guest stolen out of an inn.

1. Inns were allowed for the benefit of travellers, who have certain privileges whilst they are in their journies, and are in a more peculiar manner protected by the law; it is for this reason, that the innkeeper shall answer for those things which are stolen within the inn, tho' not delivered to him to keep, and tho' he was not acquainted that the guests brought the goods to the inn; for it shall be intended to be thro' his negligence, or occasioned by the fault of him or his servants. *8 Co. Caley's case.* Innkeeper answerable for goods stolen.
2. So if he puts a horse to pasture, without the direction of his guest, and the horse is stolen, he must make satisfaction. (But otherwise, if with his direction.) *8 Co. Caley's case.* Horse stolen out of a pasture.
3. But an innkeeper shall not be liable to make any satisfaction for a theft or burglary committed in his inn, and in the chamber of any of his guests *hired for some time*; but if the guest leaves goods in his chamber, and returns again *the same night*, the innkeeper shall be liable for such goods stolen. *Cro. Ja. 188.* Difference between a guest and a lodger.
4. Also, if an innkeeper bids his guest take the key of his chamber and lock the door, and that he will not take the charge of the goods; yet if they are stolen, he shall be answerable: because he is charged by law for all things which come to his inn, and he cannot discharge himself by such or the like words. *Dalt. c. 56. Black. 169.* Innkeeper shall not discharge himself by refusing to be answerable.

XVIII. Guests stealing goods.

A guest in a common in, arising in the night time, and carrying goods out of his chamber into another room, and from thence to the stable, intending to ride away with them, is guilty of felony, altho' there was no trespass in the taking of them (which yet is generally required in cases of felony). *Dalt. c. 40.* Guest stealing goods.

Note, The universities are generally excepted out of these acts concerning alehouses.

A. Warrant for felling ale without licence, on 26 G. 2. c. 31.

Westmorland. } To the constable of ——— in the said county.

WHEREAS A. J. of ——— in the said county, yeoman, hath this day made information upon oath, before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, that A. O. of ——— yeoman, [or, Whereas A. J. of ——— yeoman, hath this day made information, and shewed probable cause before me that he suspecteth that A. O. &c.] doth upon his own authority, not being thereunto lawfully licensed, keep a common alehouse at ——— aforesaid, contrary to the laws in that case made and provided; and that A. W. of ——— yeoman, and B. W. of ——— yeoman, are material witnesses to be examined

Alehouses.

mined concerning the premisses: You are therefore hereby required forthwith to summon the said A. O. to appear before me to answer the premisses, and to be dealt withal according to law; and you are likewise to summon the said A. W. and B. W. to appear before me at the same time, to testify their knowledge concerning the same. And with them do you appear at the same time, to certify what you shall have done in the premisses. Herein fail you not. Given under my hand and seal the ——— day of ———.

B. Conviction for selling ale without licence, on the
26 G. 2. c. 31.

By the words of the statute, the conviction shall be in this form, or to this effect:

Middlesex. **A.** O. is convicted on his own confession (or, on the oath of ———) of having sold ale, beer, or other liquors, in the parish of ——— in this county, on the ——— day of ——— without being licensed thereto according to law: This is the first, second, or third conviction. Given under my hand and seal this ——— day of ———.

And this conviction shall be certified to the next sessions, to be filed amongst the records.

C. Warrant to levy the forfeiture on conviction for
selling ale without licence, on 26 G. 2. c. 31.
and 27 G. 2. c. 20.

Westmorland. } To the constable of ———

WHEREAS A. O. of ——— yeoman, was this day lawfully convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, for keeping of a common alehouse in the parish of ——— in the said county, not being therunto lawfully licensed, according to the statutes in that case made and provided, by reason whereof he hath forfeited to the use of the poor of the said parish the sum of 40s. These are therefore to require you, that you do levy the said forfeiture by distraining the goods and chattels of him the said A. O. And if in [four] days time from your taking the said distress, the said forfeiture, together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by the sale thereof pay one moiety of the said forfeiture to A. I. of ——— yeoman, who informed me of the said offence, and the other moiety to the overseers of the poor of the parish aforesaid, to be by them applied to the use of the poor of the said parish; rendering to him the said A. O. the overplus upon demand, the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if no sufficient distress shall be found whereon to levy the said sum of 40s. that then you certify the same to me, together with the return of this precept. Hereof fail not. Given under my hand and seal the ——— day of ———.

D. Com-

D. Commitment for want of distress for selling ale without licence, on 26 G. 2. c. 31.

Westmorland. } To the keeper of the house of correction [or,
common gaol] at _____ in the said county.

WHEREAS A. O. of _____ yeoman, was on the _____ day of this instant _____ duly convicted before me _____ one of his majesty's justices of the peace in and for the said county, of having upon his own authority, and not being thereunto lawfully licensed, taken upon him to keep a common alehouse or tipling house at _____ aforesaid in the said county, and having used commonly selling of ale, against the form of the statutes in such case made and provided, whereby the said A. O. hath for his said offence forfeited the sum of 4s. And whereas on the _____ day of _____ I did issue my warrant to the constable of _____ aforesaid, to levy the said penalty by distress and sale of the goods and chattels of the said A. O. and to distribute the same according as is directed by the statute in that behalf made; and whereas it duly appears to me, as well on the oath of the said constable, as otherwise, that he the said constable hath used his best endeavours to levy the said sum on the goods and chattels of the said A. O. as aforesaid, but that no sufficient distress can be found whereon to levy the same; These are therefore to command you to receive the said A. O. into your custody in the said house of correction, there to remain for the space of one month from the date hereof. Given under my hand and seal, the _____ day of _____.

The like will do for the second and third offence, *mutatis mutandis*; and recite, "And whereas the said A. O. hath been once, "at another time, convicted before me of the like offence, and "hath now offended the second time." Or, "And whereas the "said A. O. hath been twice heretofore lawfully convicted of the "like offence, and hath now offended the third time, &c."

E. F. Precept to the high constable to issue warrants to the petty constables, to summon alehousekeepers to be licensed; on 5 & 6 Ed. 6. c. 25. 2 G. 2. c. 28. and 26 G. 2. c. 31.

Westmorland. } To John Bowness, gentleman, high constable
of the East Ward within the said county.

IN pursuance of the statutes in that case made, these are to require you, on sight hereof, to issue out your warrants to all petty constables belonging to the several constablewicks within your said ward, in the form, or to the effect hereafter following. Given under our hands and seals the _____ day of _____.

J. P.
K. P.

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The form of the warrant as above directed:

Westmorland, } To the constables of _____
East Ward. }

BY virtue of a warrant from his majesty's justices of the peace acting within the said ward, to me directed, you are hereby required to give notice to all licensed innkeepers and alehousekeepers, and licensed brandy sellers or other retailers of distilled liquors to be drank in their houses, within your constablewick, and also to all persons unlicensed (so far as the same shall come to your knowledge) who do intend to offer themselves to be licensed at the next general meeting of the said justices for that purpose, that they do personally appear before the said justices at _____ on the _____ day of September next, at the hour of _____ in the forenoon of the same day, to take or renew their licences for the year ensuing; and also to give them notice, that every person then and there to be licensed, must personally enter into a recognizance in the sum of 10l. together with two sureties in 5l. each, or one surety in 10l. that they will not use or suffer any unlawful games, and that they will keep good order and rule within their respective houses and other places; and if any shall be hindered by sickness, or other reasonable cause to be allowed by the said justices, that he must procure two sureties then and there to be bound in like manner in 10l. each.

And unto such persons as have not been licensed for the year preceding, you are further to give notice, that no licence will be granted to any of them, unless he shall also, at the same time and place, produce a certificate under the hands of the minister and the major part of the churchwardens and overseers, or else of three or four reputable and substantial householders of the place where he inhabiteth, setting forth that he is of good fame, and of sober life and conversation.

And you are to make a return to the said justices, at the same time and place, in writing under your hand, containing the names of all such persons as you shall have summoned so to appear before them as is aforesaid, together with their dwelling places, and the signs by which their houses are known.

Hereof fail not. Given under my hand at Raifbeck in the said county the _____ day of _____ in the year of our lord _____.

John Bowness, high constable.

G. Licence to keep an alehouse, on the 5 & 6
Ed. 6. c. 25. 2 G. 2. c. 28. and 26 G. 2.
c. 31.

Westmorland, } **A**T a general meeting of his majesty's justices of
East Ward. } the peace for the said county, acting within the
division of the East Ward aforesaid in the said county, holden at
_____ in and for the said division, for licensing persons to keep
common inns and alehouses the _____ day of September in the
_____ year of the reign of our sovereign Lord George the second,
of

of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth, and in the year of our Lord ———

We his majesty's justices of the peace for the said county, whose hands and seals are hereunto set (whereof one is of the quorum) assembled at the said general meeting, do allow and license A. B. yeoman, at the sign of ——— in ——— within the division and county aforesaid, to keep a common alehouse, or victualling house, and to utter and sell victuals, beer, ale, cyder, and other exciseable liquors, to be drank in the same house wherein he now dwelleth, and not elsewhere; for one whole year from the 29th day of this present month of September, and no longer: So as the true assize in bread, beer, ale, and other liquors, hereby allowed to be sold, be duly kept; and no unlawful game or games, drunkenness, or any other disorder be suffered in his house, yard, garden, or backside; but that good order and rule be maintained and kept therein, according to the laws of this realm in that behalf made. Given under our hands and seals, the day and year first above written.

If he hath not been licensed the year before, then these words must be inserted,——(A certificate under the hands of ——— having been first produced unto us, setting forth that the said ——— is of good fame, and of sober life and conversation.)

H. Recognizance of an alehousekeeper, on 5 & 6
Ed. 6. c. 25. and 26 G. 2. c. 31.

Westmorland. **B**E it remembred, that on the ——— day of ——— in the ——— year of the reign of ——— A. P. of ——— in the county aforesaid, innkeeper, and A. S. of ——— yeoman, and B. S. of ——— yeoman, personally came before us ——— esquires, justices of the peace for the said county, and acknowledged themselves to owe to our said sovereign Lord the King, that is to say, the said A. P. the sum of 10l. and the said A. S. and B. S. the sum of 5l. each, of good and lawful money of Great Britain, to be made and levied of their goods and chattels, lands, and tenements respectively, to the use of our said sovereign Lord the King, his heirs and successors, if the said A. P. shall make default in the condition underwritten.

The condition of this recognizance is such, that whereas the above-bounden A. P. is licensed to keep a common inn and alehouse for one year from the 29th day of this present month of September, in the house where he now dwelleth at ——— aforesaid; if he the said A. P. shall keep and maintain good order and rule, and shall suffer no disorders nor unlawful games to be used in his said house, nor in any outhouse, yard, garden, or backside, thereunto belonging, during the said term, then this recognizance shall be void.

Taken and acknowledged the day and
year abovewritten, before us

J. P.
K. P.

Alehouses.

Or if it shall be thought meet to have them all together, then it may be thus:

Westmorland. **B**E it remembered, that on the ——— day of ——— in the ——— year of the reign of ——— the persons whose names are here under written, personally came before us ——— esquires, justices of the peace for the said county, and entred into recognizances to our said sovereign Lord the King, as follows;

A. P. of ——— victualler 10l.	} Upon condition underwritten.
A. S. of ——— taylor 5l.	
A. S. of ——— shoemaker 5l.	
A. P. of ——— innkeeper 10l.	} Upon the like condition.
A. S. of ——— yeoman 10l.	

The conditions of these recognizances are such, that whereas the abovebound innkeepers, alehousekeepers, and victuallers, are severally licensed to keep common inns and alehouses for one year from the 29th day of this present month of September, in the houses where they now dwell; now if they, any, or either of them, shall keep and maintain good order and rule, and shall suffer no disorders nor unlawful games to be used in their houses, outhouses, yards, gardens, or backsides, during the said term, then these recognizances respectively shall be void.

J. P.
K. P.

I. Conviction for selling after disability, on the 26 G. 2. c. 31.

By the words of the statute the said conviction shall be in this form, or to this effect:

Middlesex. **A**. O. is convicted on his own confession (or, on the oath of ———) of having sold ale, beer, or other liquors, in the parish of ——— in this county, on the ——— day of ——— after being disabled to sell the same. This is the first, second, or third conviction. Given under my hand and seal this ——— day of ———.

Which said conviction shall be certified to the next sessions, to be filed amongst the records.

K. Warrant

K. Warrant to levy the penalty for selling ale in a vessel not marked; on 11 & 12 W. c. 15.

Westmorland. } To the constable of ———

WHEREAS A. O. of ——— in the parish of ——— and county of ——— aforesaid, alehousekeeper, hath this day been duly convicted before me ——— one of his majesty's justices of the peace in and for the said county, by the oath of A. W. a credible witness, of retailing, uttering, and selling beer, on the ——— day of ——— in his house at ——— aforesaid, in a vessel made of earth, which vessel was not signed, stamped, or marked to be of the content of the full ale quart, or ale pint, according to the standard thereof remaining in custody of the chamberlains of his majesty's exchequer, nor in proportion thereunto; whereby the said A. O. hath forfeited a sum not exceeding 40s. nor less than 10s. one half part thereof to the use of the poor of the parish of ——— aforesaid, and the other half part to A. I. who prosecutes for the same: Now I do hereby adjudge the said A. O. to have forfeited 20s. for his said offence; and I do hereby empower and require you, to levy the said sum of 20s. upon the goods and chattels of the said A. O. by distress and sale thereof, rendring to the said A. O. the overplus, if any be, deducting thereout reasonable charges; and that you pay one half part of the said forfeiture to the overseers of the poor of the said parish, for the use of the poor there, and the other half part to A. I. who prosecutes for the same as aforesaid. Given under my hand and seal, the ——— day of ———.

L. Warrant to levy the penalty for suffering tippling, on 1 J. c. 9. and 27 G. 2. c. 20.

Westmorland. } To the constable of ——— and to the churchwardens of the parish of ———.

WHEREAS it hath been duly proved before me ——— this present day, That A. O. of ——— in the parish of ——— in the said county, alehousekeeper, did upon the ——— day of ——— permit and suffer A. D. of ——— shoemaker, and B. D. of ——— labourer, to remain and continue drinking and tipling in the alehouse of the said A. O. in the parish aforesaid, they having no urgent occasion, nor other lawful reason so to do; These are therefore to require you the said constables and churchwardens, or some or one of you, to levy by distress of the goods and chattels of the said A. O. the sum of 10s. for the said offence, for the use of the poor of the said parish, and to detain the said goods for the space of six days next after such distress taken, if the said forfeiture of 10s. shall not be satisfied and paid to you within that time; and that after the said six days, if the same shall not be so paid as aforesaid, together with the reasonable charges of taking, and keeping, the said distress, that you do appraise and sell the same to satisfy

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tisfy the said forfeiture, rendring the surplusage to the owner upon demand, reasonable charges of taking, keeping, and selling the said distrefs being first deducted. And if there shall not be sufficient distrefs, whereby to levy the said sum of 10 s. that you do certify the same to me, together with the return of this warrant. Given under my hand and seal, the ——— day of ———.

M. Commitment for suffering tipling in default of distrefs; on 1 J. c. 9.

Westmorland. } To the constable of ——— and to the keeper
of the common gaol at ——— in the said
county.

WHEREAS on the ——— day of ——— it was duly proved before me ——— that A. O. of ——— in the parish of ——— in the said county, alehousekeeper, did upon the ——— day of ——— last past, suffer A. D. of ——— shoemaker, and B. D. of ——— labourer, to remain and continue drinking and tipling in the alehouse of the said A. O. at ——— aforesaid, contrary to the statute in that case made; and whereas on the said ——— day of ——— I did by my warrant lawfully executed, require the constables and churchwardens of the said parish of ——— or some of them, to levy the sum of 10 s. of lawful money, upon the goods and chattels of the said A. O. being forfeited by him, to the use of the poor of the said parish, for the said offence. And whereas it duly appears to me, as well on the testimony of A. C. constable of ——— aforesaid, as otherwise, that he the said A. C. hath used his best endeavours to levy the same as aforesaid, but that the said A. O. hath not sufficient goods and chattels, upon which distrefs may be taken to satisfy the said forfeiture: These are therefore in his majesty's name, to command you the said constable of ——— aforesaid, to take the said A. O. and to convey him safely to the gaol aforesaid, and to deliver him there to the keeper thereof, together with this warrant: And I do also hereby command you the said keeper, safely to keep and detain the aforesaid A. O. in your custody in the said gaol, until the said sum of 10 s. shall be duly paid for the use and purpose aforesaid. Given under my hand and seal, the ——— day of ———.

N. Warrant to receive the penalty for tipling;
on 4 J. c. 5. 1 J. c. 9. 21 J. c. 7. 1 C.
c. 4.

Westmorland. } To the churchwardens of the parish of ———

WHEREAS it hath been duly proved before me ——— that A. O. of ——— labourer, did on the ——— day of ——— remain and continue drinking and tipling in a common alehouse, known by the sign of ——— at ——— in the said parish, in the county aforesaid, contrary to the statutes in such case made and provided, by reason whereof he hath forfeited the sum of 3 s. 4 d. to the use of the poor of the said parish: These are therefore

fore to require you forthwith to demand of the said A. O. the said sum of 3s. 4d. And if he shall refuse or neglect to pay the same as aforesaid, by the space of one week next after the date hereof, that you certify the same to me, together with the return of this precept. Given under my hand and seal at ——— in the said county, the ——— day of ———.

O. Warrant to levy the penalty for tipling, on non-payment; on 4 J. c. 5. 1 J. c. 9. 21 J. c. 7. 1 C. c. 4. and 27 G. 2. c. 20.

Westmorland. } To the constable of ——— in the said county.

WHEREAS it hath been duly proved before me ——— that A. O. of ——— yeoman, did on the ——— day of ——— remain and continue drinking and tipling in a common alehouse, known by the sign of ——— at ——— in the parish of ——— in the said county, contrary to the statutes in such case made and provided, by reason whereof he hath forfeited the sum of 3s. 4d. to the use of the poor of the said parish; And whereas on the ——— day of ——— I did by my warrant require the churchwardens of the said parish to demand of the said A. O. the said sum of 3s. 4d. to the use of the poor as aforesaid; And whereas it appears to me, as well on the oath of C. W. churchwarden of the parish aforesaid, as otherwise, that he the said C. W. did on the ——— day of ——— duly demand of the said A. O. the said sum for the use as aforesaid, but that he the said A. O. hath neglected to pay the same as aforesaid, and that it is not as yet paid: These are therefore to require you forthwith to distrain the goods and chattels of him the said A. O. and if within the space of [five] days next after such distress taken, the said sum shall not be paid, together with the reasonable charges of taking and keeping the same, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the said sum of ——— to the churchwardens aforesaid, for the use aforesaid; returning to him the said A. O. the overplus upon demand, the reasonable charges of taking, keeping, and selling the said distress, being first deducted. And you are to certify to me, with the return of this precept, what you shall have done in the premisses. Given under my hand and seal, the ——— day of ———.

P. Commitment to the stocks for tipling, on inability to pay the penalty; on 4 J. c. 5.

Westmorland. } To the constable of ———.

WHEREAS it hath been duly proved before me ——— that A. O. of ——— yeoman, did on the ——— day of ——— remain and continue drinking and tipling in a common alehouse, known by the sign of ——— in ——— in the parish of ——— in the

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county aforesaid, contrary to the statutes in such case made and provided, by reason whereof he hath forfeited the sum of 3 s. 4 d. to the use of the poor of the said parish; And whereas it duly appears to me, that the said A. O. is not able to pay the said forfeiture; These are therefore to require you to set the said A. O. in the stocks, there to remain by the space of four hours. And for your so doing, this shall be your sufficient warrant. Given under my hand and seal, this ——— day of ———.

Q. Warrant to receive the penalty, on the first conviction of drunkenness; on 4 J. c. 21. and 21 J. c. 7.

Westmorland. } To the churchwardens of the parish of ——— in the said county.

FOrasmuch as it hath been fully proved this day, before me ——— one of his majesty's justices of the peace in and for the said county, upon the oath of A. I. of ——— yeoman, that A. O. of ——— in the county aforesaid, on the ——— day of ——— at ——— aforesaid, in the parish of ——— in the said county, was drunk, contrary to the statute in such case made; and the said A. O. is thereof convicted before me, by which he hath forfeited the sum of 5 s. to be disposed of as is herein after mentioned: These are therefore, in his majesty's name, to command you the said churchwardens to demand and receive of and from the said A. O. the said sum of 5 s. to be by you accounted for, to the use of the poor of the said parish; and if he shall refuse or neglect to pay the same by the space of one week from and after the date hereof, that you make a return to me of such his refusal or neglect, and of this warrant. Given under my hand and seal, at ——— in the said county, the ——— day of ———.

R. Warrant to levy the penalty of drunkenness, on non-payment; by 4 J. c. 5. 21 J. c. 7. and 27 G. 2. c. 20.

Westmorland. } To the constable of ——— in the said county.

WHereas A. O. of ——— in the parish of ——— in the county aforesaid, labourer, was on the ——— day of ——— convicted before me ——— one of his majesty's justices of the peace for the said county, for that he the said A. O. was on the ——— day of ——— drunk, at ——— aforesaid, in the parish and county aforesaid, by which he hath forfeited the sum of 5 s. And whereas I the said ——— did issue my warrant on the ——— day of ——— to the churchwardens of the parish of ——— aforesaid, to demand and receive the said sum of 5 s. of and from the said A. O. And whereas it duly appears to me, as well on the oath of C. W. churchwarden of the parish of ——— aforesaid, as otherwise, that they the said churchwardens did on the ——— day of ——— duly demand the said sum

sum of 5 s. of and from the said A. O. but that he the said A. O. hath neglected to pay the same as aforesaid, and that it is not as yet paid: These are therefore to command you forthwith to levy the said sum by distraining the goods and chattels of him the said A. O. And if within the space of [six] days next after such distress by you taken, the said sum, together with reasonable charges for taking and keeping the said distress, shall not be paid, that then you do sell the said goods so by you distrained as aforesaid, and out of the money arising by such sale, that you do pay the said sum of 5 s. to the churchwardens of the said parish, for the use of the poor of the said parish, rendering to him the said A. O. the overplus upon demand, the necessary charges of taking, keeping, and selling the said distress, being first deducted. And if the said A. O. be not able to pay the said sum of 5 s. and sufficient distress cannot be found whereof to levy the said sum, that you certify the same to me, together with the return of this warrant. Given under my hand and seal this — day of —.

S. Commitment to the stocks for drunkenness, on inability to pay the penalty; on 4 J. c. 5. 21 J. c. 7.

Westmorland. } To the constable of — in the said county.

W Hereas A. O. of — in the said county, labourer, was on the — day of — convicted before me — one of his majesty's justices of the peace for the said county, for that he the said A. O. was on the — day of — drunk at — aforesaid, in the parish of — in the said county, whereby he hath forfeited the sum of 5 s. And whereas it duly appears to me, that the said A. O. is not able to pay the said sum of 5 s. These are therefore to require you in his majesty's name, to set him the said A. O. in the stocks, there to remain for the space of six hours. Given under my hand and seal the — day of —

Alias Capias. See Process.

Almanacks. See Stamps.

Annuities.

1. **B**Y the several acts of 4 W. c. 3. 5 W. c. 5. 5 W. c. 20. and 2 & 3 An. c. 3. Annuitants on demanding their share of annuities, in the case of survivorship on the said respective acts, shall (unless the nominee appear in person) produce a certificate of the life of such nominee, to be signed (*gratis*) by the minister and churchwardens where the nominee lives, on the day

Certificate of the nominee's life.

day when the payment shall become due: Or otherwise the annuitant may make oath of the truth of such nominee's life, on the day when the payment shall become due, before a justice of the peace where such person making oath shall reside; and the justice shall make a certificate thereof; for which oath and certificate no fee shall be taken. And persons swearing falsely shall be guilty of perjury, and forging such certificate shall be guilty of forgery.

Counterfeiting orders.

2. By the several acts of 9 G. c. 12. 4 G. 2. c. 9. and 9 G. 2. c. 34. If any person shall counterfeit any order to receive annuities; or power to transfer the same; or the name of the proprietor; or shall personate such proprietor; he shall be guilty of felony without benefit of clergy.

Assignment of annuities.

3. By the several acts of 4 An. c. 6. 5 An. c. 19. 5 An. c. 22. and 6 An. c. 5. A justice may take affidavits of the due execution of the assignment or devise of annuities, upon the said several acts respectively.

Apothecary. See Physicians.

Appeals.

Appeal, what.

1. **T**HIS word has two significations in law; the one is, removing a cause from an inferior court or judge, to a superior; as from one or more justices, to the quarter sessions.

The other kind of appeal (which is the subject of this title) is a prosecution against a supposed offender, by the party's own private action; prosecuting also for the crown, in respect of the offence against the publick. 2 Haw. 155.

In what cases an appeal may be brought.

2. An appeal is brought in three cases; 1. By a man for a wrong to his ancestor. 2. By a wife for the death of her husband. 3. For wrong done to the appellants themselves, as in the case of robbery, rape, or maihem; but this last is disused, on account of the nicety of the pleadings, and the charge of the prosecution; and the method of indictment is now generally taken. Wood 1072.

Within what time an appeal may be brought.

3. A person acquitted on an indictment of murder, shall not be set at liberty, but shall be re-committed, or bailed, till the year and day be past; within which time an appeal may be brought. 3 H. 7. c. 1.

Appeal brought before the sheriff and coroner.

4. It is certain, that an appeal may be commenced before the sheriff and coroner, and removed from them into the king's bench by *certiorari*. 2 Haw. 156.

Appeal brought before justices of the peace.

5. And it seems to be holden in *Fitzherbert's Abridgment*, that justices of the peace have power to receive appeals; but there is much greater authority for the contrary opinion. 2 Haw. 156.

6. If

6. If the person appealed shall be acquitted, the appellor shall be imprisoned for a year, and restore damages to the party, and be grievously fined to the king. *13 Ed. 1. §. 1. c. 12.* That is, if the appeal shall appear to the court to have been malicious. *2 Haw. 198.*

7. Forasmuch as an appeal is the suit of the party, as well as of the king, hence it is that the king cannot pardon an offender found guilty upon an appeal, as he may when found guilty upon an indictment; for in such case he can only pardon for himself, but not for the party. *2 Haw. 155.*

Apples and Pears.

WHEREAS apples and pears are frequently sold by measure, commonly called water-measure, the contents whereof are very uncertain; therefore for the future, the said measure shall be round, and in diameter eighteen inches and an half within the hoop, and eight inches deep; and so in proportion: And every measure, commonly called water-measure, by which apples and pears are sold, shall be heaped as usually: And whosoever shall sell or buy any apples or pears by any other measure, shall forfeit *10 s.* half to the informer, and half to the poor, on conviction on the oath of one witness, before one justice (or mayor), to be levied by the petty constable by warrant of the said justice by distress and sale. *1 An. §. 1. c. 15. s. 1.*

But this shall not extend to any measures sealed and allowed by the fruiterers company in *London. S. 2.*

Concerning the robbing of orchards, see title *Wood.*

Apprehending offenders. See Arrest.

Apprentices.

Apprentices.

Concerning the settlement of apprentices, See
title Poor.

- I. Who may take apprentices.*
- II. Who are compellable to be bound apprentices.*
- III. Binding.*
- IV. Binding of poor apprentices.*
- V. Money given to bind out poor apprentices.*
- VI. Binding poor apprentices to the sea-service.*
- VII. Differences between the master and apprentice.*
- VIII. Apprentice stealing his master's goods.*
- IX. Assigning apprentices.*
- X. Master dying.*
- XI. Apprentices setting up their trades.*

I. Who may take apprentices.

In husbandry.

1. **E**VERY person being an householder, and having and using half a plough-land in tillage, may take any apprentice above the age of ten years, and under eighteen, to serve in husbandry till twenty-one at the least, or till twenty-four as the parties can agree. 5 *El. c. 4. s. 25.*

In trades in
towns corporate.

2. Every person being an householder, and twenty-four years old at the least, dwelling in any city or town corporate, and exercising any art, mystery, or manual occupation there, may retain the son of any freeman, not occupying husbandry, nor being a labourer, and inhabiting in the same, or in any other city or town corporate, to serve and be bound as an apprentice, after the custom and order of the city of *London*, for seven years at the least, so as such apprenticeship do not expire before the apprentice shall be twenty-four years of age. 5 *El. c. 4. s. 26.*

But no person dwelling in any city or town corporate, being a merchant, mercer, draper, goldsmith, ironmonger, imbroiderer, or clothier, shall take any apprentice except he be his son, or else that the father and mother of such apprentice shall have an estate of inheritance or freehold of 40 s. a year, to be certified under the hands and seals of three justices where the lands lie, to the mayor of that city or town corporate, and to be inrolled among the records there. S. 27.

And the reason of this seems to be, for that such as are to be bound apprentices in towns corporate, if their parents be of a competent livelihood, then their masters shall be not only better secured, but such apprentices also in likelihood shall have the better means

means to set up their trades after their time expired. And concerning such whose parents have not 40 s. a year, they are fitter to be bound apprentices to husbandry, and the like, in the country. *Dalt. c. 58.*

But by reason of the great alteration in the value of money since that time, this provision is become of little use; for an estate of 40 s. a year then, was equal to more than 10 l. a year now.

But the citizens of *London* and *Norwich* may take and have apprentices, as before this act. *S. 40.*

3. Every person being an householder, and twenty-four years old at the least, and not occupying husbandry, nor being a labourer, dwelling in any market town not corporate, and exercising any art, mystery, or manual occupation, may have to apprentice the child or children of any other artificer, not occupying husbandry, nor being a labourer, inhabiting in the same or any other such market town in the same shire. *5 El. c. 4. f. 28.*

In trades in market towns not corporate.

But no person dwelling in any such market town, being a merchant, mercer, draper, goldsmith, ironmonger, imbroiderer, or clothier, shall take any apprentice except he be his son, or else that his father and mother shall have an estate of inheritance or freehold of 3 l. a year, to be certified under the hands and seals of three justices of the shire where the lands lie, to the head officer of such market town where such apprentice shall be taken, there to be inrolled of record. *S. 29.*

4. Any person using the art of a smith, wheelwright, ploughwright, millwright, carpenter, rough mason, plaisterer, sawyer, lime burner, brickmaker, bricklayer, tyler, flater, helier, tyle-maker, linen-weaver, turner, cooper, miller, earthen potter, woollen weaver weaving household cloth only, fuller otherwise called tucker or walker, burner of oare and woad ashes, thatcher or shingler, wheresoever he shall dwell, may take the son of any person as apprentice, albeit his parents have no land. *5 El. c. 4. f. 30.*

In any place.

5. Every owner of a ship or vessel, and every householder exercising the trade of the seas by fishing or otherwise, and every gunner commonly called a canoneer, and every shipwright, may take apprentices for ten years or under; and every apprentice so taken, being above seven years of age, shall be by the same covenants bound, ordered and used to all intents, according to the custom of *London*, so that the covenant or bond of apprenticeship be made by writing indented, and inrolled in the town where the apprentice shall be inhabiting, if it be a town corporate, if not, then in the next town corporate: For which inrollment shall be paid not above 12 d. *5 El. c. 5. f. 12.*

Seamen.

6. Every person that shall have three apprentices in any the crafts of a clothmaker, fuller, sheerman, weaver, taylor, or shoemaker, shall keep one journeyman; and for every other apprentice above three, one other journeyman, on pain of 10 l. half to the king, and half to him that shall sue in the sessions or other court of record; or if it is in a town corporate, then to be applied as by the charter. *5 El. c. 4. f. 33.*

Number restrained.

No hatmaker shall have above two apprentices at one time, nor those for any less term than seven years, on pain of 5 *l.* a month, half to the king, and half to him that shall sue in any court of record: But this not to extend to his own son, in his own house, so as he be bound by indenture for seven years, and his term not to expire before he be twenty-two years of age. 1 *J. c.* 17. *f.* 3, 5.

Weavers of stuffs in *Norfolk* and *Norwich*, that shall employ two apprentices, shall also employ two journeymen; and no master shall have above two apprentices, or any week boy, to weave in the said trade; on pain of 5 *l.* a month to the king. 13 *Ed.* 14 *C. 2. c. 5. f.* 18.

II. Who are compellable to be bound apprentices.

Who shall be bound.

1. If any person shall be required by any householder, using half a ploughland at least in tillage, to be an apprentice and to serve in husbandry, or in any other art, mystery, or science before expressed, and shall refuse so to do, then on complaint of such housekeeper to one justice (or head officer) he shall send for the person refusing; and if he shall think the said person meet to serve, and such person refuse to be bound, he may commit him to ward, there to remain until he be contented, and will be bound. 5 *El. c. 4. f.* 35.

At what age.

2. But no person shall be bound to enter into any apprenticeship, other than such as be under the age of 21 years. 5 *El. c. 4. f.* 36.

III. Binding.

Binding to be by deed.

1. One cannot be bound an apprentice without deed. 1 *Salk.* 68.

And indented.

2. And by the 5 *El. c. 4.* it must be by deed indented. *S.* 25.

M. 1 G. 2. Smith and Birch. An action was brought against the defendant, for enticing away and detaining the plaintiff's apprentice, who had agreed by writing to serve the plaintiff for seven years. Upon evidence it appeared, that the style of the writing began *This indenture*, &c. but in fact the parchment was not indented, but was a deed poll. On exception taken to the deed, it was insisted that the young man was not an apprentice, because he was not bound by indenture. An infant can be bound no other way than as the statute of 5 *El.* directs, which is by indenture, and nothing can make this good. The deed cannot now be indented, for that would be a forgery. Therefore unless the plaintiff shews the apprentice to be of full age at the time of signing such deed, he cannot be accounted his apprentice, and by consequence no action can lie for detaining the apprentice; neither can the plaintiff prove him to be his servant by this deed, for he has declared for an apprentice, and must prove him so to be. Therefore the plaintiff was nonsuited. *Seff. Ca. V. 1. 222.*

And by the name of an apprentice.

3. And an apprentice must be retained by the name of an apprentice expressly, otherwise he is no apprentice, tho' he be bound. *Dalt. c. 58.*

4. And

4. And all indentures, covenants, promises, and bargains, for having or taking apprentices, otherwise than by the statute of *5 El.* shall be clearly void in the law to all intents and purposes; and every person that shall take any apprentice contrary to the said act, shall forfeit 10 *l.* half to the king, and half to him that shall sue in the sessions, or other court of record; or if it is in a town corporate, then to the use of such town as by the charter. *5 El. c. 4. s. 41.*

5. By the several stamp acts, the binding (except it be of parish apprentices) shall be on a treble sixpenny stamped paper or parchment; and the same shall not be given in evidence in any court till it be stamped, and the duties paid. *Stamp.*

6. And by the 8 *An. c. 9.* Besides the said stamps and duties, there shall be paid the duty of 6 *d.* for every 20 *s.* of every sum of 50 *l.* or under; and the duty of 1 *s.* for every 20 *s.* of every sum above 50 *l.* given with any apprentice; and proportionably for greater or lesser sums; to be paid by the master. *S. 32.*

And where any thing, not being money, shall be given with such apprentice, the duties shall be answered for the value thereof. *S. 44.*

But this shall not extend to any apprentice, put out at the common charge of any parish or township, or out of any publick charity. *S. 40.*

And the full sum shall be inserted in the indenture in words at length, and shall bear date on the day of the execution thereof; on pain that the master shall forfeit double, half to the king, and half with full costs to him that shall sue. *S. 35.*

And no such indenture shall be given in evidence in any suit to be brought by any the parties thereunto, unless such party on whose behalf the same shall be given in evidence, do first make oath, that to the best of his knowledge, the sum therein inserted was really and truly all that was directly or indirectly to be given with such apprentice. *S. 43.*

The said indentures, within the bills, shall be brought to the head office to be stamped with a stamp for that purpose, and the duties paid within one month after date. *S. 36.*

And elsewhere shall be brought either to the head office within the bills, or to a collector of the stamp duties out of the said limits, in two months after date, and the duties thereupon shall be paid, and the indenture stamped, if it be at the said head office; otherwise such collector shall indorse on the indenture, a receipt for the duties in words at length, and subscribe his name thereto. *S. 37.*

And if it is within 50 miles of the limits of the bills of mortality, the indenture shall within three months after date, and elsewhere within six months, be brought to the head office to be stamped. *S. 38.*

And all such indentures wherein shall not be inserted the full sum directly or indirectly given, or whereupon the duties shall not be paid, or which shall not be stamped within the time limited, shall be void, and not available in any court or place, or to any purpose

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purpose whatsoever; and the apprentice shall be incapable of exercising the said trade. S. 39.

Moreover, by the 9 *An. c. 21*. If the master shall neglect to pay the duties within the time limited, he shall forfeit 50*l.* half to the king, and half with full costs to him who shall sue. S. 66.

And by the 18 *G. 2. c. 22*. If he shall neglect to pay the same as aforesaid, he shall, besides all other penalties, forfeit double duty. S. 23, 24.

But by the 27 *G. 2. c. 16*. For relief of persons, who have omitted to pay the said duties, on payment thereof on or before *Aug. 1. 1754.* and tendering the indentures to be stamped on or before *Sep. 29. 1754.* of which timely notice shall be given in the gazette, they shall be good.

And there is the like indemnifying clause in some act every two or three years.

And by the 20 *G. 2. c. 45*. If any master, having forfeited the double duty, shall pay the same, and tender the indenture to be stamped, within two years after the determination of the apprenticeship, and before suit hath been commenced for the penalties, the indenture shall be valid, and the penalties discharged. S. 5.

And if after the master shall have forfeited the double duty, the apprentice shall in the presence of, or by writing under his hand signed in the presence of one witness, require his master to pay the same, and the master shall not do it in three months, and such apprentice shall at any time within two years after the determination of his apprenticeship, pay the double duty, he may in three months after such payment demand of his master double the sum contracted for in the indenture, and if not paid in three months after, may recover the same by action at law, with full costs. And the apprentice immediately after payment of the said double duties (if his apprenticeship shall not be then expired) and signifying by writing under his hand, that he desires to be discharged from his apprenticeship, he shall be discharged accordingly, and shall have the same benefit of the time he hath served as he would have had in case he had been assigned, or turned over to a new master. S. 6, 7.

And where any prosecution shall be commenced against the master for the penalties, if the apprentice shall pay the double duty at any time in two years after the end of his apprenticeship, he may thereupon exercise his trade, and the indenture shall be valid, and may be given in evidence. S. 8.

7. Every person that shall be bound by indenture, to serve as an apprentice in any art, science, occupation, or labour, according to the statute of the 5 *El.* albeit he be within 21 years of age, shall be bound as amply to every intent, as if he were of full age at the time of making the indentures. S. 43.

But this is to be understood of a compulsion by the means prescribed by the statute; for altho' an infant may voluntarily bind himself apprentice, and if he continue apprentice for seven years, he may have the benefit to use his trade; yet neither at the common law, nor by any words of this statute, a covenant or obligation of an infant for his apprenticeship shall bind him. But if he misbehave

Infant bound,
tho' under age.

misbehave himself, the master may correct him in his service, or complain to a justice to have him punished, according to the statute. But no remedy lieth against an infant upon such covenant. *Cro. Car.* 179.

IV. Binding of poor apprentices.

1. The churchwardens and overseers, or the greater part of them, by the assent of two justices (i 2.) may bind (A) any such children, whose parents they shall judge not able to maintain them, to be apprentices where they shall see convenient, till such man child shall come to the age of 24, and such woman child to the age of 21 or marriage; the same to be as effectual to all purposes, as if such child were of full age, and by indenture of covenant bound him or her self. 43 *El. c. 2. f. 5.* Power to bind.

2. And all persons, to whom the overseers shall by the 43 *El.* bind any children apprentices, may take and keep them as apprentices. 21 *J. c. 28.* 3 *C. c. 4. f. 22.* Power to take.

3. By the several stamp acts, the indenture must be on a six-penny stamped piece of paper or parchment; but is exempted from the additional stamps and duties for money given with the apprentice. Indenture to be stamped.

4. And where any poor child shall be appointed to be bound apprentice by the 43 *El.* the person to whom he is appointed to be bound, shall receive and provide for him, and also execute the other part of the indentures; and if he shall refuse so to do, oath being thereof made by one of the churchwardens or overseers, before two justices, he shall forfeit 10*l.* by distress and sale, by warrant (B) of such justices, to the use of the poor of the parish or place where the offence was committed; saving always to the person, to whom any poor child shall be appointed to be bound apprentice, if he shall think himself aggrieved thereby, his appeal to the next sessions, whose order therein shall be final. 8 & 9 *W. c. 30. f. 5.* Persons refusing to take.

And as the churchwardens and overseers have power to place out poor children, therefore they are proper judges of persons who are fit to be their masters; and those are, all persons, who by their profession or manner of living have occasion to keep servants; but the same are to be approved of by the justices, and if such master is dissatisfied, he may appeal to the sessions. *Dalt. c. 58.*

T. 13 W. Minchamp's case. Two justices bound an apprentice to a merchant: He appealed to the sessions, and the order was discharged. And now the court, on consideration of the matter, confirmed the order of sessions; because the act having made persons compellable to take apprentices, and given an appeal to the sessions, it was in the discretion of the justices at sessions to determine, whether it was or was not fitting to put an apprentice upon any one; and therefore the court would not disturb what the sessions had done, but confirmed the order. 2 *Salk.* 491.

E. 13 An. 2. and Wagstaff. It was moved to quash an order to compel a person to take an apprentice, because in the close of indenture it was said, that the master, at the end of the term, shall

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give his apprentice two suits of cloaths. Upon debate, the court held this to be ill; for the justices during the term of his apprenticeship cannot order him wages, they must only order him a maintenance as an apprentice, and cannot order him any thing after the term is ended. So the order was quashed. *Foley* 205. *Seff. C. V. i. 48.*

In what case he shall go with the farm.

5. A lessee for years of a farm takes an apprentice, and the term expires before the apprenticeship is ended, he must go with the farm, if the master will permit him; but where a man taketh an apprentice by reason of his ability, and the master dies before the determination of the apprenticeship, such apprentice shall go to the executor or administrator if he hath assets, and if none, then he must return to the parish where last settled. *Show. 405.*

V. Money given to bind out poor apprentices.

By the 7 *J. c. 3.* All money given by any person to be continually employed for the binding out apprentices, shall be employed in manner following, unless otherwise ordered by the givers; *viz.* All corporations or towns corporate, and in places not corporate, the minister, constables, churchwardens, overseers, or the most part of them, shall have the nomination and placing of such apprentices, and ordering of such money; and if they shall not employ the same accordingly, every person offending shall forfeit 3*l.* 6*s.* 8*d.* half to the poor, and half to him that shall sue. *S. 2.*

And the master that shall receive the money, shall be bound with one or two sureties in double the sum, unto such corporation, or to the other persons appointed by this act in places not corporate, to take care of it, on condition to repay it at the end of seven years, or within three months thereof; and if the apprentice shall happen to die within the seven years, then within one year after such death; and if the master shall die, then within one year after such master's death. *S. 3.*

And the said money shall always be put forth in three months after it shall come to the said parties hands; and if there are not then fit persons to be bound apprentices, within the places where the money is given to be employed, it shall be disposed of for binding some of the poorest children of any adjoining parish. *S. 4.*

And choice shall always be made of the poorest children; and no such apprentice shall be above 15 years of age when bound. *S. 5.*

And the said persons, in places not corporate, shall yearly within a month after *Easter*, account to their successors before two justices dwelling in or next to the place. *S. 6.*

And if any of the trustees shall break their trust, or commit any offence for which no penalty is given by this act; any person may petition the lord chancellor, who may issue a commission to hear and determine the same, and may levy the money misemployed upon such defaulters, or otherwise upon such able inhabitants of the place, as they shall think fittest; and persons aggrieved may appeal to the lord chancellor. *S. 7.*

VI. Binding poor apprentices to the sea service.

1. It shall be lawful for two justices, and for the head officers Who may be in corporations, and for the churchwardens and overseers of the bound. several parishes or townships, with the consent of such justices or head officers, to bind and put out any boy of the age of ten years or upwards, or who shall be chargeable, or whose parents shall be chargeable, or who shall beg for alms, to be an apprentice to the sea service, to any subject being master or owner of any ship or vessel, until he shall attain the age of 21 years. *2 & 3 Ann. c. 6. s. 1.*

And every person to whom any poor parish boy shall be put apprentice by the *43 El.* may, with the consent of two justices dwelling near the parish where such poor boy was bound, or with the like consent of the chief officer in a corporation, at the request of the master, his executors, administrators, or assigns, by indenture assign over such poor boy apprentice, to any master or owner of a ship or vessel, using the sea service, during the remaining time of his apprenticeship. *s. 6.*

2. And every master or owner of a ship, from 30 to 50 ton Who shall take. burden, shall be obliged to take one such apprentice, and one more for the next 50 ton, and one more for every hundred ton such ship shall exceed the burden of an hundred ton; on pain of forfeiting 10*l.* to the poor of the parish from whence such boy was bound. *s. 8.*

But no master shall be obliged to take any such apprentice, under 13 years of age, or who shall not appear to be fitly qualified both as to health and strength of body for that service. *4 Ann. c. 19. s. 16.*

3. The boy's age shall be inserted in the indenture, being truly Age to be inserted in the indenture. taken from a copy of the entry in the register book (where it can be had), which copy shall be given and attested by the minister without fee: And where no such entry can be found, two such justices, and such head officers, shall as fully as they can inform themselves of such boy's age, and from such information shall insert the same in the indentures. *2 & 3 An. c. 6. s. 1.*

4. And the churchwardens and overseers shall pay down to the What money shall be given with him. master, at the time of the binding, the sum of 50*s.* for cloathing and bedding; and the charges by this act appointed, shall be allowed on their accounts. *2 & 3 An. c. 6. s. 2.*

5. The churchwardens and overseers shall send the indentures Indenture to be to the collector of the customs at the port whereunto the master registered. belongeth; who shall enter the indenture in a book, and make an indorsement upon the indenture of the registry thereof, subscribed by him, without fee. And if he shall neglect or refuse to enter such indentures, and indorse the same, or make false entries, he shall forfeit 5*l.* to the poor of the parish from whence such boy was bound. *2 & 3 An. c. 6. s. 5.*

6. Such apprentice shall be conveyed to the port to which his Apprentice how master belongeth, by the churchwardens and overseers, or their conveyed to the agents; port.

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agents; and the charges thereof shall be paid as by the vagrant act of 11 & 12 W. 2 & 3 An. c. 6. f. 10.

That is to say, out of the gaol and marshalsea money; which by the 12 G. 2. c. 29. is directed to be paid out of the general county rate.

Counterpart to be then executed.

7. The counterpart of the indenture shall be sealed and executed by the master, and attested by the collector of the port, and the constable or other officer who carries the apprentice; which officer shall transmit such counterpart, to the churchwardens and overseers of the place from whence the apprentice was bound. 2 & 3 An. c. 6. f. 11.

Protection from being impressed.

8. And the collector or his deputy shall transmit a certificate under his hand, to the commissioners of the admiralty, containing the name and age of such apprentice, and to what ship he belongs; and on receipt of such certificate, a protection shall be made and given *gratis* to such apprentice, till he attain the age of 18 years. 2 & 3 An. c. 6. f. 5.

Also every person who shall voluntarily bind himself apprentice to the sea service, shall not be impressed for three years from the date of his indentures; which indentures shall be registred, and certificates thereof given and transmitted by the collector as aforesaid; on receipt of which certificates, protections shall be made and given for the first three years, without fee. *Id.* f. 15.

But by 4 An. c. 19. No person of the age of 18 years shall have any protection from being impressed, who shall have been in any sea service, before he bound himself apprentice. S. 17.

But every person not having before used the sea, who shall bind himself apprentice to serve at sea, shall be exempted from being impressed for three years: and the commissioners of the admiralty, on due proof of the circumstances, shall grant a protection accordingly, without fee. 13 G. 2. c. 17.

When impressed, the master to have the wages.

9. When such parish or voluntary apprentice shall be impressed, or voluntarily enter into the king's service, the owner or master, his executors, administrators, or assigns, shall be intitled to able seamens wages, for such of the apprentices, as shall upon due examination be found qualified for the same, notwithstanding their indentures of apprenticeship. 2 & 3 An. c. 6. f. 17.

Exempted from the 6d. a month.

10. Such poor boys bound out, or assigned over, to the sea service, until they shall attain to the age of 18 years, shall be exempted from the payment of 6d. a month to Greenwich hospital. 2 & 3 An. c. 6. f. 7.

Master to enter his apprentices on clearing out.

11. Every master so obliged to take such apprentice, shall after his arrival into any port aforesaid, and before he clears out of such port, give an account in writing under his hand, to the collector, containing the names and number of such apprentices as are there remaining in his service. 2 & 3 An. c. 6. f. 9.

The same to be inserted in the cocquet,

12. And every custom-house officer shall insert at the bottom of their cocquets, the number of men and boys on board the respective ships at their going out, describing the apprentices by their names, ages, and dates of their indentures, for which no fee shall be taken. 2 & 3 An. c. 6. f. 14.

13. And the collector in the port shall keep a register, containing the number and burden of all ships belonging to the port, together with the masters or owners names, and also the names of all such apprentices in such ships, and from what parishes and places they were sent; and shall transmit (*gratis*) true copies thereof signed by him, to the quarter sessions, or to such towns corporate, parishes, or places, when and so often as he shall be reasonably required so to do; and every collector refusing or neglecting to send such copy, shall forfeit 5*l.* to the poor of the parish from whence such boy was bound. 2 & 3 *An. c. 6. f. 13.* Registry to be kept in the ports.

14. Two justices near the port, and mayors of towns corporate, in or near adjoining to such port, to which such ship or vessel shall at any time arrive, may determine all complaints of ill usage from the master to such apprentice, and also of all such as shall voluntarily put themselves apprentices to the sea service, and make such order therein as they are now enabled by law to do, in other cases between masters and apprentices. 2 & 3 *An. c. 6. f. 12.* Differences between such masters and apprentices.

15. All the penalties aforesaid shall, by warrant of two justices of the county, city, or town corporate, be levied by distress and sale. 2 & 3 *An. c. 6. f. 18.* Penalties.

16. If the master shall die during the term, his widow, or his executor or administrator may assign over such apprentice to any other master who hath not his complement of apprentices. 4 *An. c. 19. f. 16.* Master dying.

VII. Differences between the master and apprentice.

1. The master is allowed by law with moderation to chastise his apprentice. *Dalt. c. 58.* Master may chastise his apprentice.

2. An apprentice cannot be discharged but by writing; for that an apprentice cannot be but by writing: but the master and apprentice may, by agreement between themselves, leave each other; and if so, then the master may give leave under his hand for the apprentice to depart; and then one justice out of sessions may discharge him, allowing the cause of his departure. *Dalt. c. 58.* Whether the master himself can discharge his apprentice.

But it seemeth that this shall not extend to parish apprentices, for that there the overseers are parties to the contract, which cannot therefore be avoided by any agreement between the master and his apprentice.

But if the master and his apprentice cannot agree, they may proceed in one of these two ways; either upon the statute of the 5 *El. c. 4.* or upon the statute of 20 *G. 2. c. 19.*

3. By the 5 *El. c. 4.* If any such master shall misuse or evil intreat his apprentice, or the said apprentice shall have any just cause to complain, or the apprentice do not his duty to his master, then the said master or apprentice being grieved, and having cause to complain, shall repair unto one justice (C. D.) of the county, or to the mayor or other head officer of the said city, town corporate, or market town, or other place where the master dwelleth; who shall by his wisdom and discretion take such order and direction between the master and his apprentice, as the equity of the cause shall require; Differences between the master and apprentice by 5 *El. c. 4.*

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and if for want of good conformity in the master, the said justice (or head officer) cannot compound and agree the matter, he shall take bond of the said master to appear at the next sessions; and on his appearance, and bearing of the matter there, if it be thought meet to discharge the said apprentice, then the justices, or four of them at the least (1 Q.) or the said mayor or other head officer, with the consent of three other of his brethren, or men of best reputation in such city, town corporate, or market town, shall have power, in writing (E) under their hands and seals, to pronounce and declare, that they have discharged the said apprentice of his apprenticeship, and the cause thereof: And the said writing, being inrolled by the clerk of the peace, or town clerk, amongst the records, shall be a sufficient discharge for the apprentice against his master, his executors and administrators. And if the default shall be found to be in the apprentice, then the said justice, or the said mayor or other head officer, with the assistance aforesaid, shall cause such due correction and punishment to be administered unto him, as by their wisdom and discretions shall be thought meet. S. 35.

If any such master] That is, any such master as is before mentioned in this statute, in the trades therein specified; and the former resolutions confined the sense of the statute to such trades only, but the later adjudications seem to extend the equity thereof to other trades not mentioned in the statute; as in the following instances:

M 7 W. K. and Gately. On a *certiorari* it was moved to quash an order of sessions, for the discharge of one *Edward Green* from his apprenticeship to the defendant *Gately*. The fact was, that *Gately* was a mountebank, and being at a place in *Yorkshire*, where he kept a publick stage, *Green* was by indenture bound apprentice to him in this manner, *viz* to *Robert Gately*, surgeon, to learn the trade he now useth; and immediately he went upon the stage, and ever since continued in the employ. After which, being with his master *Gately* in *Middlesex*, he complained to the justices, that his master did not teach him the trade. Upon which they discharged him. This being done, *Green* set up the trade of mountebank himself. It was moved to quash the order, the justices being willing, because they were imposed upon. And the exception was, that the statute of the 5 *El.* in discharging apprentices is confined, and extends only to apprentices mentioned in that clause, and there neither surgeon nor mountebank is mentioned: And tho' a surgeon may be a trade within the statute, which a man cannot exercise without serving an apprenticeship to, because that clause of the statute is general; yet this part of the statute, relating to the discharge of apprentices, extends only to trades there mentioned. By the court; The clause relating to the discharge of apprentices is general, and goes to all manner of apprentices, even to those of merchants; but afterwards the court were of opinion, that the power of discharging reaches only to the trades mentioned in the statute, among which a surgeon is not mentioned; for that, tho' as to the serving seven years apprenticeship, a servant comes under the general term of arts and mysteries,

yet the power of discharging reaches only to the trades particularly mentioned. 2 *Salk.* 471, 2.

And *M. 12 An. 2.* and *Furnese*. It was held, that the statute extends only to the trades therein mentioned; and therefore not to a glass bottle maker. *Caf. of S.* 29.

On the other hand, in the case of *K. and Collingbourn*, 12 *G.* Exception was taken to an order of discharge, that the justices could not discharge the apprentice, because the trade to which he was bound, viz. a glazier, was not within the statute: But not allowed; for tho' formerly it was held, that the trade ought to be a trade within the statute, yet the later resolutions have been otherwise. *L. Raym.* 1410.

And in *K. and Amies*, 7 *G.* 2. It was resolved, that the justices have jurisdiction as to discharging apprentices, as well in other trades as those mentioned in the statute. *Nels. Appr.*

So in *K. and Cust*, *E.* 8 *G.* 2. that the statute extends to trades not mentioned therein. *Nels. Appr.*

Or the apprentice do not his duty to his master] The justices discharged an Apprentice at the sessions, he having the King's evil: By the court, The justices have no power to discharge an apprentice from his master in case of sickness; only an authority to inquire into misbehaviour. *Caf. of S.* 117.

Shall repair unto one justice] Upon an order made at the sessions to discharge an apprentice, it did not appear, that he applied himself to a justice first. And *Holt Ch. J.* was of opinion, that the justice hath power to make an order, and if obeyed by the master, then the sessions can have no power; if disobeyed, then the justice upon complaint may bind the master to the sessions, and that the sessions have no power otherwise. 1 *Salk.* 67.

T. 13 W. K. and Johnson. Exception was taken to an order for discharging an apprentice, that the complaint was made originally at sessions, without any previous application to a single justice out of sessions: *Holt Ch. J.* delivered the opinion of the court, That the order was good; if it had been a new question, he should have held a prior application to some justice out of sessions necessary; but after so many orders affirmed in this court, which have been otherwise, it is too late to unsettle that now. 1 *Salk.* 68.

T. 12 & 13 W. K. and Daxys. The court agreed, that it is a point not now to be disputed, that the sessions hath an original jurisdiction to discharge apprentices. *Seff. C. V.* 1. 221.

On his appearance] *E. 13 W. Ditton's case*. It was moved to quash an order made for the discharge of an apprentice. The question arose upon the clause of the statute, which directs, that upon appearance of the master, the apprentice may be discharged by four justices, after one justice out of sessions hath endeavoured to compose the matter in difference. And in this case, it was objected, that *Ditton* the master was bound over to appear, and did not; and the justices have but a limited jurisdiction, and it is expressly directed by the act, that the discharge is to be made on the appearance of the master; besides, there is another remedy, to

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proceed on the recognizance, which is forfeited by not appearing. By the court, The act must have a reasonable construction, so as not to permit the master to take advantage of his own obstinacy; and it would be very hard, that supposing the master is profligate, and runs away, the apprentice shall never be discharged. 2 Salk. 490.

Shall be a sufficient discharge for the apprentice against his master] But as the justices may discharge the apprentice from his master, for ill usage; so also they may discharge the master from the apprentice for evil and disorderly behaviour. *Read. Appr.*

Discharge] T. 13 W. K. and Johnson. Exception was taken to an order of discharge, that the justices had ordered money to be returned: But by the court, the order is good. And Holt Ch. J. said, he never doubted of that matter, for it is a power consequential upon their jurisdiction to discharge. 1 Salk. 68.

Shall cause due correction and punishment to be administered] It seemeth that by the 7 J. c. 4. one justice may send the apprentice to the house of correction as an idle and disorderly person, if he is in fault; tho' this cannot be done by this act of the 5 El. Wood 85.

Differences between the master and apprentice by 20 G. 2. c. 19.

4. By the 20 G. 2. c. 19. On complaint (F) unto two justices, by any parish apprentice, or other apprentice upon whose binding out no larger a sum than 5l. was paid, concerning any misusage, refusal of necessary provision, cruelty, or other ill treatment, they may summon (G) the master or mistress, to appear before them at a reasonable time to be named in such summons; and on proof upon oath of the truth of the said complaint (whether the master or mistress be present or not, if service of the summons be also upon oath proved) the said justices may discharge (H) the apprentice by warrant or certificate under their hands and seals, for which warrant or certificate no fee shall be paid. S. 3.

And such justices on complaint (I. K.) on oath by any master or mistress, against any such apprentice, concerning any misdemeanor, miscarriage, or ill behaviour, may hear and determine the same, and punish the offender, by commitment (L) to the house of correction, there to remain and be corrected, and held to hard labour for a reasonable time, not exceeding one kalendar month, or otherwise by discharging (M) such apprentice. S. 4.

Persons aggrieved by any determination, order or warrant of such justices (except any order of commitment) may appeal to the next sessions; who may award costs to either party not exceeding 40s. to be levied by distress and sale. S. 5.

And no certiorari shall issue to remove any the said proceedings. S. 6.

Apprentice fleeing into another shire.

5. If any apprentice of husbandry, or of any art or occupation aforesaid, shall flee into any other shire, the justices, mayors or other head officers being justices, may issue writs of *capias* to the sheriffs of the counties or other head officers of the places whither he shall so flee, to take his body, returnable before them at what time shall please them; so that if he come by such process, he

he may be put in prison, till he find sufficient surety well and honestly to serve his master. 5 *El. c. 4. s. 47.*

And by the act of 24 G. 2. c. 55. If a justice shall issue a warrant against such person, and he shall escape into another shire; the constable or other person, on having the warrant indorsed by a justice in such other shire, may arrest him there, and carry him before a justice in such other shire, if the offence is bailable, to find bail, or else shall carry him back before a justice in the shire from whence the warrant did first issue.

VIII. Apprentice stealing his master's goods.

By the 21 H. 8. c. 7. Servants going away with their masters goods, with intent to steal them, shall be guilty of felony; but not to extend to apprentices.

And by 12 An. st. 1. c. 7. Persons stealing to the value of 40s. being in a dwelling house or outhouse thereto belonging, tho' such house be not broken, and tho' no person be therein, shall be guilty of felony without benefit of clergy. But this not to extend to apprentices under fifteen years of age.

But if they be fifteen years of age, they shall be guilty as other persons.

IX. Assigning apprentices.

The master assigning, and the apprentice himself consenting, will not make him an apprentice to the assignee within the fifth of *El.* But by the custom of *London*, he may be turned over to another. *Dalt. c. 58.*

And an assignment to the sea service is good by act of parliament, as is before mentioned.

H. 3 G. Barnes's case. Order returned on a *certiorari*: It is resolved by the justices at the sessions, that where a person was bound an apprentice to *Barnes* by the parish officers, and that *Barnes* had assigned him to another, they resolve that the assignment is void, and direct *Barnes* to take his apprentice again. Ch. J. Why may not the first master assign him? This is but a performance of the covenant to instruct him; and if he assign him to a person who does instruct him, they cannot make such an order as this; they may punish him if he do not provide for his apprentice, or instruct him; but the justices are not concerned in the manner of doing it. Quashed. *Foley 155.*

For the jurisdiction of the justices extends no farther, than to compel the master to take care of his apprentice; but in what manner he does it, whether in his own house or otherwise, is nothing to them. But if the assignee of the apprentice doth not provide for him, the first master may be compelled to do it, and he may take his remedy over. *Sess. C. V. 1. 110.*

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X. Master dying.

If the master dies, the apprentice goes to the executor or administrator to be maintained, if there are assets: But the executor or administrator may bind him to another master, for the remaining part of his time. *Danv. Abr. Tit. Custom of London.*

M. 10 W. K. and Peck. Eyre J. held, that an apprenticeship is a personal trust between the master and servant, and determines by the death of either of them; and by the death of either of them, the end and design of the apprenticeship cannot be obtained, and it may be the executor is of another trade; he admitted, covenant would lie against the executor, but in that there is no inconvenience, because the executor may make his defence by pleading no assets, or debts of a higher nature. *Holt Ch. J.* said, that by the custom of *London*, the executor shall put the apprentice to another master of the same trade; and that in other places, it would be very hard to construe the death of the master to be a discharge of the covenants; he said, it had been held, that the covenant for instruction failed, but that he still continues an apprentice with the executor, as to maintenance. *1 Salk. 66.*

XI. Apprentices setting up their trades.

By the common law, no man may be prohibited to work in any lawful trade, or in more trades than one, at his pleasure. *11 Co. 53.*

So that without an act of parliament no man may be restrained, either to work in any lawful trade, or to use divers mysteries or trades; therefore an act of parliament made to restrain any person herein, must be taken strictly, and not favourably as acts made in affirmance of the common law.

The restraining clause in the statute of 5 *El. c. 4.* is as follows: *It shall not be lawful to any person, to set up, occupy, use, or exercise, any craft, mystery, or occupation now used or occupied within the realm of England or Wales, except he shall have been brought up therein seven years at the least as an apprentice by this statute, nor to set any person on work therein, except he shall have been apprentice as aforesaid, or else having served as an apprentice will become a journeyman, or hired by the year; on pain of 40 s. a month, half to the king, and half to him that shall sue in the sessions, or other court of record; or if it is in a town corporate, then to be disposed of as other fines by the charter. S. 31.*

It shall not be lawful] This is a negative clause, and no one shall exercise a trade against it, unless by virtue of a custom, as the widows of tradesmen, who by custom carry on the trade of their husbands, which the court held not to be within this statute. *2 Salk. 610.*

To any person] But by the 15 *C. 2. c. 15.* Hemp workers of all kinds, net makers, and makers of tapestry hangings are excepted; who may set up without having served seven years.

And

And by 22 G. 2. c. 44. All officers, mariners, and soldiers, who have been employed in his majesty's service, and not deserted, may exercise such trades as they are apt for, in any town or place.

And by 6 & 7 W. c. 18. An Apprentice discovering two offenders guilty of coining, so as they be convicted, shall be deemed a freeman, and may exercise his trade as if he had served out his time. S. 12.

To set up, occupy, use, or exercise] T. 3 W. Hobbs and Young. Exercising a trade by others who have served seven years is within the statute; for he that hath not served an apprenticeship is thereby restrained to work as a trader, either by himself or others; for the intent of the act is, to annex the benefit of trade to such as underwent the hardship of learning it, thereby to encourage labour in youth: And few would undergo the trouble of being apprentices, if they might employ others to work for them. 2 Salk. 610.

If a man use the trade of a tallow chandler, baker, brewer, or any other lawful trade, or manual occupation, for his own use, or for the use of his family, without selling any for lucre and gain, he may lawfully do it; but he cannot retain any apprentice therein; but he may hire one to be his servant, who is skilful in that trade or occupation. 8 Co. 129.

Now used] That is, on the 12th of Jan. 1562, when that parliament began; and this restraint shall not extend any further, than the words do expressly direct, and therefore not to new arts and mysteries since invented. 1 Roll's Rep. 10. 1 Ventr. 326, 346.

Within the realm of England and Wales] M. 1 G. 2. K. and Lister. Indictment for using the trade of a dry salter, being a craft, mystery, or occupation used in this kingdom on the 12th day of Jan. in the 5th year of Eliz. Which the court held to be ill; for that the words in this kingdom tie down the indictment to the kingdom of Great Britain, as it is at this day; whereas it should have been in England, or in England and Wales. Sess. C. V. 2, 160.

Except he shall have been brought up therein seven years] E. 11 W. K. and Fox. Indictment for using the trade of a taylor, not having served seven years, was quashed, because it said only, not having served as an apprentice within England or Wales; for it may be he did so beyond sea, and if it were any where it sufficeth. 1 Salk. 67.

As an apprentice] E. 5 An. 2, and Maddox. By the court; Upon indictment on this statute, in evidence we allow following the trade for seven years to be sufficient, without any binding, this being an hard law. 2 Salk. 613.

Or else having served as an apprentice, will become a journeyman] M. 26 C. 2. K. and Moor. The defendant was indicted for using the trade of a weaver, not having served as an apprentice seven years;

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years; the evidence was, he served six as an apprentice, and had since as journeyman in the same trade worked above that time: And by the court, the serving of seven years is sufficient either way; and the defendant was found Not guilty. 3 Keb. 400.

A. Indenture of a parish apprentice; on 43 El.
c. 2. s. 1, 5.

THIS indenture made the _____ day of _____ in the year of our Lord _____ Between A. B. and C. D. churchwardens, and E. F. and G. H. overseers of the poor of the parish of _____ in the county of _____ of the one part, and A. M. of _____ in said parish, shoemaker, of the other part, witnesseth, that the said churchwardens and overseers of the poor, by and with the consent of _____ two of his majesty's justices of the peace for the said county, dwelling near to [or, in] the said parish of _____ one whereof is of the quorum, have by these presents put, placed, and bound A. P. a poor boy, whose parents B. P. and C. P. are not able to maintain him, of the age of _____ years, to be an apprentice with him the said A. M. and as an apprentice with him the said A. M. to dwell, from the date of these presents, until the said A. P. shall come to the age of twenty-four years [or, if a female, until the said A. P. shall come to the age of twenty-one years, or the time of her marriage, which shall first happen] according to the statutes in such case made and provided. By and during all which time and term, the said A. P. shall the said A. M. his said master well and faithfully serve, in all such lawful business as the said A. P. shall be put unto by the command of his said master, according to the power, wit, and ability of him the said A. P. and honestly and obediently in all things shall behave himself towards his said master, and honestly and orderly towards the rest of the family of the said A. M. And the said A. M. for his part, for himself, his executors and administrators, doth hereby promise and covenant to and with the said churchwardens and overseers of the poor, for them and their successors and for the said A. P. that he the said A. M. shall the said A. P. in the craft, mystery, and occupation of a shoemaker, which he the said A. M. now useth, after the best manner that he can or may, teach, instruct, and inform, or cause to be taught, instructed, and informed, as much as thereunto belongeth, or in any wise appertaineth; And that the said A. M. shall also during all the said term find and allow unto the said apprentice sufficient meat, drink, apparel, washing, lodging, and all other things needful or meet for an apprentice, in such manner that the said apprentice shall not at any time during the said term, be in any wise a charge to the said parish or the parishioners thereof. In witness whereof the said parties have hereunto set their hands and seals, the day and year first above written.

The assent of two justices.

WE — two of his majesty's justices of the peace for the abovementioned county of — dwelling near to the abovementioned parish of — and one of us of the quorum, do hereby declare our assent to the binding the abovenamed A. P. an apprentice to the abovenamed A. M. according to the form and effect of the aboveswritten indenture. Given under our hands the — day of &c.

B. Warrant to levy 10*l.* for not receiving a poor apprentice; on the statute of 8 & 9 of *W.* and 27 G. 2. c. 20.

Westmorland. } To the constables of —

WHEREAS A. B. and C. D. churchwardens, and E. F. and G. H. overseers of the poor of the parish of — in the said county, by the assent of [us] — two of his majesty's justices of the peace for the said county, dwelling near to [or, in] the said parish of — one whereof is of the quorum, did endeavour to bind A. P. a poor male child of the said parish, whose parents are not able to maintain him, apprentice to A. M. of — in the said parish, taylor, and for that intent did prepare and duly perfect one pair of indentures pursuant to the statute in such case made and provided, which said pair of indentures was signed and confirmed by [us] the said two justices: And whereas it hath been duly proved before us, as well upon the oath of the said A. B. as otherwise, that the said A. M. hath refused, and doth refuse, to receive and provide for the said A. P. as an apprentice, and also to execute another part of the said indentures, being duly tendred to him by the said churchwardens and overseers of the poor, whereby the said A. M. hath forfeited the sum of ten pounds: These are therefore, in his said majesty's name, to require and command you, to make distress of the goods and chattels of him the said A. M. and if within the space of [six] days next after such distress by you made, the said sum of 10*l.* together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, pay the said sum of 10*l.* to the overseers of the poor of the said parish of — where the said offence was committed, for the use of the poor of the said parish; returning the overplus upon demand unto him the said A. M. the reasonable charges of taking, keeping, and selling the said distress being therout first deducted: Provided always, that if the said A. M. shall think himself aggrieved with this our adjudication, award, and warrant, and shall appeal therefrom to the next general or quarter sessions of the peace for the said county, that then you suspend and forbear the sale of such distress till further order shall be made

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made in the premisses upon the appeal of the said A. M. to the said sessions of the peace. Given under our hands and seals the ——— day of &c.

C. Warrant against the master for misusing his apprentice; on 5 *El. c. 4.*

Westmorland. } To the constables of ———

WHEREAS complaint hath been duly made unto me ——— one of his majesty's justices of the peace in and for the said county, by A. P. apprentice to A. M. of ——— in the said county, shoemaker, that the said A. M. hath misused and evil intreated him the said A. P. by cruel punishment, and beating him the said A. P. without just cause, and by not allowing unto him sufficient meat, drink, apparel, [or as the case shall be] These are therefore in his majesty's name to command you to cause the said A. M. personally to appear before me at the house of ——— in said county, on ——— the ——— day of ——— at the hour of ——— in the afternoon of the same day, to answer unto the said complaint; and also to cause the said apprentice to appear before me at the same time and place, to make good his said complaint. Herein fail not. Given under my hand and seal the ——— day of &c.

D. Warrant against the apprentice, on complaint of the master; on the 5 *El. c. 4.*

Westmorland. } To the constables of ———

WHEREAS complaint hath been duly made unto me ——— one of his majesty's justices of the peace in and for the said county, by A. M. of ——— in the said county, husbandman, that A. P. now being an apprentice to him the said A. M. is negligent, stubborn, disorderly, and doth not his duty to him the said A. M. his master; These are therefore to command you to bring the said apprentice before me, and to give notice to the said master that he appear before me at the same time, that such order may be taken in the premisses, as equity shall require. Herein fail not. Given under my hand and seal the ——— day of &c.

E. Order of discharge by four justices at the sessions; on the 5 *El. c. 4. f. 35.*

Westmorland. **A**T a general quarter sessions of the peace, holden at ——— in and for the county aforesaid, the ——— day of ——— in the ——— year of the reign of our lord George the second, by the grace of God of Great Britain, France, and Ireland, King, defender of the faith, and so forth; Before ——— justices of our said lord the king assigned to keep the peace

in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and of the quorum, It is ordered as followeth;

Upon the petition of A. P. apprentice to A. M. of ——— in the said county, husbandman, to be relieved upon certain neglects of the said master in instructing him in his trade, and in misusing and evil intreating the said apprentice by cruel punishment [or as the case shall be]; And the said master having likewise appeared upon his recognizance taken before J. P. esquire, one of the said justices, to answer to the complaint of the said petition, and having proved nothing whereby to clear himself of the said complaint; but on the contrary, the said A. P. having given full proof of the truth of the said complaint to the satisfaction of the said court: We therefore, whose hands and seals are hereunto set, being four of the said justices, and of the quorum, do hereby order, pronounce, and declare, that the said apprentice shall be, and is hereby discharged and freed from his said apprenticeship; and that the said master shall pay and restore to the said apprentice the sum of ——— being part of the sum of ——— which he the said master had with the said apprentice upon his binding: And this to be a final order betwixt the said master and apprentice, any thing contained in their indentures of apprenticeship, or otherwise, to the contrary notwithstanding. Given under our hands and seals the day and year first above written.

F. Complaint of an apprentice to two justices against his master; on 20 G. 2. c. 19.

Westmorland. **T**HE information and complaint of A. P. apprentice to A. M. of ——— in the said county, husbandman, taken and made [on oath, if he is above 14 years of age] before us two of his majesty's justices of the peace in and for the said county, the ——— day of ——— in the year &c.

Who saith, that he the said A. P. about a year and a half ago last past, became bound an apprentice by indenture to A. M. of ——— aforesaid, husbandman; that at several times, since he entred upon the said apprenticeship, the said A. M. hath misused and ill treated him the said apprentice, and particularly [as the case shall be].

A + P
his mark.

Taken and signed the day and
year above; before us

J. P.
K. P.

Apprentices.

- G. Summons of the master by two justices, on complaint of the apprentice; on the 20 G. 2. c. 19. s. 3.

Westmorland. } To the constable of ———.

WHEREAS complaint hath been made unto us ——— two of his majesty's justices of the peace in and for the said county, by A. P. apprentice to A. M. of ——— in the said county, husbandman, that he the said A. M. hath misused and ill treated him the said A. P. and particularly [as the case shall be]: These are therefore to require you to summon the said A. M. to appear before us at ——— in the said county, on ——— the ——— day of ——— to answer unto the said complaint; and also that you give notice unto him, to bring with him the indenture of apprenticeship between him and his said apprentice; and also that you bring before us at the same time and place the said A. P. to make good the said complaint; and also that you bring with you this precept, and certify unto us then and there what you shall have done in the execution thereof. Given under our hands and seals the ——— day &c.

- H. Discharge of an apprentice by two justices, on the master's misusing him; by the 20 G. 2. c. 19. s. 3.

Westmorland. **W**HEREAS complaint hath been made before us ——— two of his majesty's justices of the peace in and for the said county, by A. P. apprentice to A. M. of ——— in the said county, taylor, that he the said A. M. hath misused and ill treated him the said apprentice [and particularly, as the case shall be]; And whereas the said A. M. hath appeared before us in pursuance of our summons to that purpose, but hath not cleared himself of and from the said accusation and complaint, but on the contrary the said A. P. hath made full proof of the truth thereof before us upon oath; We therefore by these presents do discharge him the said A. P. of and from his apprenticeship to the said A. M. any thing in the indenture of apprenticeship made betwixt them, or otherwise howsoever, to the contrary notwithstanding. Given under our hands and seals the ——— day of &c.

[Or, And whereas it hath been duly proved before us, as well upon the oath of A. C. constable of ——— aforesaid, as otherwise, that he the said A. C. did duly summon the said A. M. to appear before us at a reasonable time in the said summons mentioned and specified; but notwithstanding the same, he the said A. M. hath not appeared before us according to such summons: We therefore, having duly examined into the matter of the said complaint, and the truth thereof having been fully proved before us upon oath, do discharge &c.]

I. Complaint to two justices of the master against his apprentice; on the 20 G. 2. c. 19. s. 4.

Westmorland. **T**HE complaint and information of A. M. of _____ in the said county, husbandman, taken on oath before us _____ two of his majesty's justices of the peace in and for the said county, the _____ day of _____.

Who saith, that A. P. having been bound to him an apprentice by indenture bearing date the _____ day &c. and having entred upon his apprenticeship accordingly, hath been refractory and disobedient to him the said A. M. [and particularly as the case shall be.]

Taken the day and year
above, before us

A. M.

J. P.
K. P.

K. Warrant for a disorderly apprentice, by two justices; on the 20 G. 2. c. 19. s. 4.

Westmorland. } To the constable of _____

WHEREAS oath hath been made before us _____ two of his majesty's justices of the peace in and for the said county, by A. M. of _____ in the said county, husbandman, that A. P. apprentice to the said A. M. hath committed divers misdemeanors against the said A. M. his master, and hath likewise run away from his said master; These are therefore to require you forthwith to apprehend the said A. P. and bring him before us, to answer unto the said complaint, and to be dealt with according to law: And you are to give notice to the said A. M. that he appear before us at the same time, to make good the said complaint. Given under our hands and seals &c.

L. Commitment of an apprentice to the house of correction, on complaint of his master, by two justices; on the 20 G. 2. c. 19. s. 4.

Westmorland. } To the constable of _____ in the said county,
and to the keeper of the house of correction at
_____ in the said county.

WHEREAS complaint hath been made before us _____ two of his majesty's justices of the peace in and for the said county, upon the oath of A. M. of _____ in the said county, husbandman, that A. P. apprentice of the said A. M. hath committed divers misdemeanors against him the said A. M. his master; And whereas upon examination thereof, and upon bearing the allegations of both parties having come before us for that purpose, and

Approver.

upon due consideration had thereof, we have adjudged, and do hereby adjudge the said complaint to be true: We do therefore hereby command you the said constable, to take and convey the said A. P. to the said house of correction, and to deliver him to the said keeper thereof, together with this warrant: And we do hereby command you the said keeper of the said house of correction, to receive the said A. P. into your custody in the said house of correction, there to remain and be corrected, and held to hard labour for the space of — from the date hereof. Given under our hands and seals the — day &c.

M. Discharge of an apprentice by two justices, on complaint of the master; by 20 G. 2. c. 19. s. 4.

Westmorland. **W**HEREAS complaint &c. (as in the last precedent) — We do therefore by these presents discharge the said A. P. from his apprenticeship to the said A. M. any thing in any indenture or indentures of apprenticeship betwixt them, or otherwise, to the contrary notwithstanding. Given &c.

Approver.

AN approver (probator) is a person indicted of treason or felony, and in prison for the same, who upon his arraignment, before any plea pleaded, doth confess the indictment, and takes a corporal oath to reveal all treasons and felonies that he knoweth of, and therefore prays a coroner, before whom he is to enter his appeal or accusation, against those that are partners in the crime contained in the indictment. 3 Inst. 129.

This accusation of himself, and oath, makes his accusation of another person of the same crime to amount to an indictment; and if his partners are convicted, he shall have his pardon of course. 3 Inst. 129, 130.

But justices of the peace cannot take cognizance hereof, because they have no authority by their commission to assign a coroner. 3 Inst. 130.

And besides, as it is in the discretion of the court, whether they will suffer one to be an approver, this method of late hath been seldom practised: And in many cases we have what seems to amount to the same, by statute; where pardon is assured to offenders, on discovering and convicting their accomplices.

Aqua Vitae. See Excise.

Arbitration. See Award.

Armour embezzling. See Stores.

Armour

Arraignment.

67

Armour popish. See Popery.

Armour seizing. See Affray.

Army. See Soldiers and Militia.

Arrack. See Excise.

Arraignment.

WHEN an offender comes into court, or is brought in by process, sometimes of *capias*, and sometimes of *habeas corpus* directed to the gaoler of another prison; the first thing that follows thereupon, is his arraignment. 2 H. H. 216.

Now arraignment is nothing else but the calling of the offender to the bar of the court, to answer the matter charged upon him. 2 H. H. 216.

And the word in latin is no other than *ad rationem ponere*, and in french *ad reson*, or abbreviated *a resn*; for as the ancient word *disfrain* or *derayn* imports in latin *disfrationare*, to disprove or evince the contrary of any thing that is or may be affirmed, so *arraigne* is *ad rationem ponere*, to call to account or answer. 2 H. H. 216.

The prisoner on his arraignment, tho' under an indictment of the highest crime, must be brought to the bar without irons and all manner of shackles or bonds, unless there be a danger of escape, and then he may be brought with irons. 2 H. H. 219.

Also there is no necessity that a prisoner, at the time of his arraignment, hold up his hand at the bar, or be commanded so to do; for this is only a ceremony for making known the person of the offender to the court; and if he answers that he is the same person, it is all one. 2 Haw. 308.

Arrest.

THIS is to be understood of arrests in criminal cases only, and not in civil cases.

Arrest, from the French *arrest*, to stop or stay, is a restraint of a man's person, depriving him of his own will and liberty, and binding him to become obedient to the will of the law: And it may be called the beginning of imprisonment. Lamb. 93.

Concerning which I will shew,

I. *Who may or may not be arrested.*

II. *For what causes of suspicion an arrest may be.*

III. *By whom the arrest shall be made.*

IV. *The manner of an arrest.*

V. *What is to be done after the arrest.*

I. Who may or may not be arrested.

- Privilege of parliament. 1. Generally, a member of parliament shall have the privilege of parliament for himself and his servants to be freed from arrests: but for treason, felony, and breach of the peace there can be no privilege. 4 *Inst.* 24, 25.
- Peers and bodies corporate. 2. In cases of peers and corporations, the process is a *distringas*, for they cannot be arrested. 3 *Salk.* 46.
- In churchyards. 3. None shall arrest priests or their clerks, or other persons of holy church, whilst they attend to divine service, in churches, churchyards, or other places dedicated to God; on pain of imprisonment and ransom at the King's will, and he shall also make gree to the parties arrested. 50 *Ed.* 3. c. 5. 2 *R.* 2. c. 15.
- On Sundays. 4. Also a warrant executed against any person whatsoever, on the Lord's day, is void; and the persons serving the same shall suffer damages, as if they had done the same without warrant, except in cases of treason, felony, and breach of the peace. 29 *C.* 2. c. 7. f. 6.

II. For what causes of suspicion an arrest may be.

- Suspicion. By the statute of 34 *Ed.* 3. c. 1. Power is given to the justices of the peace, to arrest all those, whom they find by indictment, or by *suspicion*, and to put them in prison.
- Causes of suspicion: And the causes of suspicion, which are generally agreed to justify the arrest of an innocent person for felony, are these that follow;
- Common fame. (1) The common fame of the country; but it seems, that it ought to appear upon evidence, in an action brought for such arrest, that such fame had some probable ground. 2 *Haw.* 76.
- Circumstances of guilt. (2) The being found in such circumstances, as induce a strong presumption of guilt; as coming out of a house wherein murder hath been committed, with a bloody knife in one's hand; or being found in possession of any part of goods stolen, without being able to give a probable account of coming honestly by them. 2 *Haw.* 76.
- Flight. (3) The behaving one's self in such a manner as betrays a consciousness of guilt; as where a man accused of felony, on hearing that a warrant is taken out against him, doth abscond. 2 *Haw.* 76.
- But the party who flies from an arrest for a capital offence, is not thereby guilty of a capital offence, but only liable to forfeit his goods, when such flight is found against him. 2 *Haw.* 122.
- Evil company. (4) The being found in company with one known to be an offender, at the time of the offence; or generally at other times keeping company with persons of scandalous reputation. 2 *Haw.* 76. 2 *Inst.* 52.
- Living idle. (5) The living an idle, vagrant, and disorderly life, without having any visible means to support it. 2 *Haw.* 76.
- Hue and cry. (6) The being pursued by hue and cry. 2 *Haw.* 76.

For if a felony is done, and one is pursued upon hue and cry, that is not of ill fame, suspicious, unknown, nor indicted; he may be attached and imprisoned by the law of the land. *2 Inst.*

52.

But generally, no such cause of suspicion, as any of the above-mentioned, will justify an arrest, where in truth no such crime hath been committed; unless it be in the case of hue and cry. *2 Harw.*

76.

III. By whom the arrest shall be made.

1. In criminal cases, a person may be apprehended and restrained of his liberty, not only by process out of some court, or warrant from a magistrate, but frequently by a constable, watchman, or private person, without any warrant or precept.

Arrest without warrant:

2. Thus all persons, who are present when a felony is committed, or a dangerous wound given, are bound to apprehend the offender, on pain of being fined and imprisoned for their neglect.

By private persons.

2 Harw. 74.

Also, every private person is bound to assist an officer demanding his help, for the taking of a felon, or the suppressing of an affray. *2 Harw.* 75.

Also by the vagrant act of 17 G. 2. Every private person may apprehend beggars and vagrants.

3. Also, a watchman may arrest a night-walker, without any warrant from a magistrate. *2 Inst.* 52.

By watchmen.

4. In like manner, a constable may *ex officio* arrest a breaker of the peace in his view, and keep him in his house, or in the stocks, till he can bring him before a justice. *1 H. H.* 587.

By constables.

5. Or any person whatsoever, if an affray be made to the breach of the King's peace, may without any warrant from a magistrate, restrain any of the offenders, to the end the King's peace may be kept; but after the affray is ended, they cannot be arrested without an express warrant. *2 Inst.* 52.

By any person whatsoever.

6. So much concerning an arrest without a warrant; next follows arresting with such warrant.

Arrest with warrant:

7. The warrant is ordinarily directed to the sheriff or constable, and they are indictable, and subject thereupon to a fine and imprisonment, if they neglect or refuse it. *1 H. H.* 581.

By the sheriff or constable.

8. If it be directed to the sheriff, he may command his bailiff, under-sheriff, or other sworn and known officer, to serve it, without writing any precept. But if he will command another man, that is no such officer, to serve it, he must give him a written precept; otherwise, false imprisonment will lie. *Lamb.* 89.

Sheriff may depute.

9. But every other person, to whom it is directed, must personally execute it; yet it seems, that any one may lawfully assist him. *2 Harw.* 86.

Others cannot depute.

10. If a warrant be generally directed to all constables, no one can execute it out of his own precinct; for in such case it shall be taken respectively to each of them within their several districts, and not to one of them to execute it within the district of another; but if it be directed to a particular constable (Mr. *Hawkins* says,

Where a constable may execute it out of his own district.

to a particular constable *by name*), he may execute it any where within the jurisdiction of the justice, but is not compellable to execute it out of his own constablewick. Lord Raym. 546. 1 H. H. 581. 2 H. H. 110. 2 Harw. 86.

Any person may execute.

11. The justice that issues the warrant, may direct it to a private person if he pleaseth, and it is good; but he is not compellable to execute it, unless he be a proper officer. 1 H. H. 581.

But not to be directed to the party.

12. But by the justices oath, the warrant ought not to be directed to the party, but to some indifferent person, to execute it.

Where directed to two jointly.

13. If a warrant is directed to two or more jointly, yet any one of them alone may execute it. Dalt. c. 169.

IV. The manner of an arrest.

To be gone about immediately.

1. The officer to whom a warrant is directed and delivered, ought with all speed and secrecy to find out the party, and then to execute the warrant. Dalt. c. 169.

Opposing the execution.

2. It is certainly an offence of a very high nature, to oppose one who lawfully endeavours to arrest another for treason or felony: And it seems, that the person who so opposes an arrest for treason, whereof he knows the party to have been guilty, is thereby guilty of the treason; and that he who so opposes an arrest for felony, is an accessory to the felony. 2 Harw. 121.

Arresting in the night.

3. An arrest in the night is good, both at the suit of the King and of the subject; else the party may escape. 9 Co. 66.

Arresting in another county.

4. By the 24 G. 2. c. 55. Constables and others may, on having the warrant indorsed by a Justice in another county, into which an offender shall have escaped, arrest an offender in such other county, and carry him before a Justice in such other county, if the offence is bailable, to find bail; or else shall carry him back again before a Justice in the county from whence the warrant did first issue.

Taking the power of the county.

5. A private person cannot raise power to arrest or detain a felon. 1 H. H. 601.

But any justice, or the sheriff, may take of the county any number that he shall think meet, to pursue, arrest, and imprison traitors, murderers, robbers, and other felons; or such as do break, or go about to break, or disturb the King's peace: and every man being required, ought to assist and aid them, on pain of fine and imprisonment. Dalt. c. 171.

But it is not justifiable for a justice, sheriff, or other officer, to assemble the *posse comitatus*, or raise a power or assembly of people, upon their own heads, without just cause. Dalt. c. 171.

But where a justice, sheriff, or other officer, is enabled to take the power of the county, it seemeth they may command, and ought to have the aid and attendance of all knights, gentlemen, yeomen, husbandmen, labourers, tradesmen, servants, and apprentices, and of all other persons being above the age of fifteen years, and able to travel. Dalt. c. 171. Because, by the statute of Winchester, all of that age are bound to have harness.

But women, ecclesiastical persons, and such as be decrepit, or diseased, shall not be compelled to attend them. Dalt. c. 171.

And

And in such case it is referred to the discretion of the justice, sheriff, or other officer, what number they will have to attend on them, and how and after what manner they shall be armed or otherwise furnished. *Dalt. c. 171.*

6. As to the case of breaking open doors, in order to apprehend offenders, it is to be observed, that the law doth never allow of such extremities but in cases of necessity; and therefore, that no one can justify the breaking open another's doors to make an arrest, unless he first signify to those in the house the cause of his coming, and request them to give him admittance. *2 Harw. 86.*

Breaking open
doors.

But where a person authorized to arrest another, who is sheltered in a house, is denied quietly to enter into it, in order to take him; it seems generally to be agreed, that he may justify breaking open the doors in the following instances:

(1) Upon a *capias* grounded on an indictment for any crime whatsoever; or upon any *capias* from the chancery or king's bench, to compel a man to find sureties for the peace or good behaviour. *2 Harw. 86.*

(2) Where one known to have committed a treason or felony, or to have given another a dangerous wound, is pursued either with or without a warrant, by a constable or private person; but where one lies under a probable suspicion only, and is not indicted, it seems the better opinion at this day (*Mr. Hawkins* says) that no one can justify the breaking open doors in order to apprehend him: (And this opinion he founds on *Coke's 4 Inst. 177.* and *Hale's pleas of the crown 91.*) *2 Harw. 87.*

But Lord *Hale*, in his history of the pleas of the crown, says, that upon a warrant for probable cause of suspicion of felony, the person to whom such warrant is directed, may break open doors to take the person suspected, if upon demand he will not surrender himself, as well as if there had been an express and positive charge against him; and so (he says) hath the common practice obtained, notwithstanding the contrary opinion of Lord *Coke*: for in such case the process is for the King, and therefore a *non omittas* is implied. *1 H. H. 580, 583. 2 H. H. 117.*

And as he may break open such person's own house, so much more may he break open the house of another to take him; for so the sheriff may do upon a civil process: But then he must at his peril see that the felon be there; for if the felon be not there, he is a trespasser to the stranger whose house it is. *2 H. H. 117.*

But it seems that he that arrests as a *private man* barely upon suspicion of felony, cannot justify the breaking open of doors to arrest the party suspected, but he doth it at his peril, that is, if in truth he be a felon, then it is justifiable, but if he be innocent, but upon a reasonable cause suspected, it is not justifiable. *1 H. H. 82.*

But a *constable* in such case may justify, and the reason of the difference is this; because that in the former case it is but a thing permitted to private persons to arrest for suspicion, and they are not punishable if they omit it, and therefore they cannot break open doors; but in case of a constable, he is punishable if he omit it upon complaint. *2 H. H. 92.*

Arrest.

(3) Upon a warrant from a justice of the peace, to find sureties for the peace or good behaviour. 2 *Haw.* 86. 1 *H. H.* 582. 2 *H. H.* 117.

And, in general, Mr. *Dalton* says, an officer upon any warrant from a justice, either for the peace or good behaviour, or in any case where the King is a party, may by force break open a man's house, to arrest the offender. *Dalt. c.* 169.

(4) On a warrant to search for stolen goods, the doors may be broken open, if the goods are there; and if they are not there, the constable seems indemnified, but he that made the suggestion, is punishable. 2 *H. H.* 151.

(5) Where forcible entry or detainer is found by inquisition before justices of the peace, or appears on their view. 2 *Haw.* 86.

(6) On a *capias utlagatum*, or *capias pro fine*. 2 *Haw.* 86.

(7) On the warrant of a justice of the peace for the levying of a forfeiture, in execution of a judgment, or conviction for it, grounded on any statute, which gives the whole or any part of such forfeiture to the King. 2 *Haw.* 86.

(8) Where an affray is made in an house, in the view or hearing of the constable, he may break open the doors to take them. 1 *Haw.* 137. 2 *Haw.* 87.

(9) If there be disorderly drinking or noise in a house, at an unreasonable time of night, especially in inns, taverns, or ale-houses, the constable or his watch, demanding entrance, and being refused, may break open the doors, to see and suppress the disorder. 2 *H. H.* 95.

(10) Wherever a person is lawfully arrested for any cause, and afterwards escapes, and shelters himself in an house. 2 *Haw.* 87.

But upon a general warrant, without expressing any felony, or treason, or surety of the peace, the officer cannot break open a door. 1 *H. H.* 584.

Neither ought doors to be broken open to take a person, who is required to take certain oaths by virtue of a statute, because in such case the warrant is not grounded on a precedent offence. 2 *Haw.* 87. 12 *Co.* 131.

But if an officer, to serve any warrant, enters into a house, the doors being open, and then the doors are locked upon him, he may break them open in order to regain his liberty. 2 *Haw.* 87.

Killing in the
arrest or pursuit.

7. If there be a warrant against a person, for a trespass or breach of the peace, and he flies and will not yield to the arrest, or being taken makes his escape; if the officer kills him, it is murder. 2 *H. H.* 117.

But if such person, either upon the attempt to arrest, or after the arrest, assault the officer, to the intent to make his escape from him, and the officer standing upon his guard, kills him, this is no felony; for he is not bound to go back to the wall, as in common cases of *se defendendo*, for the law is his protection. 2 *H. H.* 118.

But where a warrant issueth against a person for felony, and either before arrest, or after, he flies and defends himself with stones or weapons, so that the officer must give over his pursuit, or otherwise cannot take him without killing him, if he kill him

it

it is no felony. And the same law is, for a constable that doth it by virtue of his office, or on hue and cry. 2 *H. H.* 118.

But then there must be these cautions: 1. He must be a lawful officer; or there must be a lawful warrant. 2. The party ought to have notice of the reason of the pursuit, namely, because a warrant is against him. 3. It must be a case of necessity, and that not such a necessity as in the former case, where an assault is made upon the officer; but this is the necessity, namely, that he cannot otherwise be taken. 2 *H. H.* 119.

But tho' a private person may arrest a felon, and if he fly so as he cannot be taken without he be killed, it is excusable in this case for the necessity; yet it is at his peril, that the party be a felon; for if he be innocent of the felony, the killing (at least before the arrest) seems at least manslaughter; for an innocent person is not bound to take notice of a private person's suspicion. 2 *H. H.* 119.

8. A constable sworn and commonly known, and acting within his own precinct, need not shew his warrant; but he ought to acquaint the party with the substance of it. 2 *Harw.* 85.

Whether the constable need to shew his warrant.

And an officer giveth sufficient notice what he is, when he saith to the party, I arrest you in the King's name; and in such case, the party at his peril ought to obey him, tho' he knoweth him not to be an officer; and if he have no lawful warrant, the party grieved may have his action of false imprisonment. *Dalt. c.* 169.

But the learned editor of *Hale's* history observes hereupon, that the books referred to do intend the general warrant constituting such person an officer, as a bailiff, or the like, in a civil action; tho' it may be otherwise in case of felony, because in such case a private person may arrest a felon without any warrant at all. 2 *H. H.* 116.

But if he acts out of his precinct, or is not sworn and commonly known, he must shew his warrant if demanded. 2 *Harw.* 85, 86. Otherwise the party may make resistance, and needs not to obey it. *Dalt. c.* 169.

But if the constable has no warrant, but doth it by virtue of his office, as constable, it is sufficient to notify that he is constable, or that he arrests in the King's name. 1 *H. H.* 583.

But in the case of a warrant of distress, issued by a justice of the peace, for the levying a pecuniary forfeiture or sum of money, it is specially provided by the statute of the 27 *G. 2. c.* 20. that the officer executing the same, shall, if required, shew his warrant to the person whose goods are distrained, and shall suffer a copy thereof to be taken.

9. If the constable come unto the party, and require him to go before the justice, this is no arrest or imprisonment. *Dalt. c.* 170.

No arrest by words.

For bare words will not make an arrest, without laying hold on the person. 1 *Salk.* 79. 2 *Harw.* 129.

10. It hath been holden, that if a constable, after he hath arrested the party by force of a warrant, suffer him to go at large, upon his promise to come again and find sureties, he cannot afterwards arrest him by force of the same warrant: However if the party return, and put himself again under the custody of the constable, it seems that it may be probably argued, that the constable may

Retaking after arrest.

Arrest.

may lawfully detain him, and bring him before the justice, in pursuance of such warrant; but in this the law doth not seem to be clearly settled. 2 *Harw.* 81.

But if the party arrested do escape, the officer upon fresh suit may take him again and again, so often as he escapeth, altho' he were out of view, or that he shall fly into another town or county. *Dalt. c.* 169.

V. What is to be done after the arrest.

By a private person.

1. When a private person hath arrested a felon, or one suspected of felony, he may detain him in custody till he can reasonably dismiss himself of him; but with as much speed as conveniently he can, he may do any of these three things:

(1) He may carry him to the common gaol; but that is now rarely done. 1 *H. H.* 589. 2 *H. H.* 77.

(2) He may deliver him to the constable, who may either carry him to gaol, or to a justice of the peace. 1 *H. H.* 589.

(3) He may carry him immediately to a justice of the peace. 1 *H. H.* 589.

By a watchman.

2. If the constable, or his watch, hath arrested affrayers, or persons drinking in an alehouse disorderly at an unreasonable time of night, he may put the persons in the stocks, or in a prison if there be one in the vill, till the heat of their passion or intemperance is over, tho' he deliver them afterwards; or till he can bring them before a justice. 2 *H. H.* 95.

By an officer by warrant.

3. If the arrest is by virtue of a warrant, when the officer hath made the arrest, he is forthwith to bring the party, according to the direction of the warrant: If it be to bring the party before the justice who granted the warrant specially, then the officer is bound to bring him before the same justice; but if the warrant be to bring him before any justice of the county, then it is in the election of the officer, to bring him before what justice he thinks fit, and not in the election of the prisoner. 1 *H. H.* 582. 2 *H. H.* 112.

But if the time be unreasonable, as in or near the night, whereby he cannot attend the justice, or if there be danger of a present rescue, or if the party be sick, he may secure him in the stocks, or in an house, till the next day, or such time as it may be reasonable to bring him. 2 *H. H.* 120.

And when he hath brought him to the justice, yet he is in law still in his custody, till the justice discharge, or bail, or commit him. 2 *H. H.* 120.

Returning the warrant.

4. But it is said, the constable is not obliged to return the warrant itself, but may keep it for his own justification, in case he should be questioned for what he had done; but only to return what he has done upon it. *Lord Raym.* 1196.

Constable indemnified.

5. And this seems to be implied in the statute of the 24 *G. 2. c.* 44. which enacteth, that no action shall be brought against any constable or other officer, or person acting by his order, and in his aid, for any thing done in obedience to the warrant of a justice of the peace, until demand hath been made, or left at the usual place

place of his abode, by the party, or by his attorney, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for six days after such demand: And if after compliance therewith, any such action shall be brought, without making the justice who signed the warrant defendant, on producing and proving such warrant at the trial, the jury shall give their verdict for the defendant. S. 6.

6. By an ancient statute, 27 H. 6. c. 10. No sheriff shall take Fee for an arrest. for any arrest, but 20 *d.* and the bailiff which maketh the arrest 4 *d.* on pain of 40 *l.* half to the king, and half to him that will sue in sessions (or the courts above), and treble damages to the party injured.

The rewards for arresting or apprehending highwaymen and others, may be found under their respective titles.

Arson. See Burning.

Artificers. See Servants.

Assault and Battery.

I. *Assault, what.*

II. *Battery, what.*

III. *In what cases they may be justified.*

IV. *How punished.*

I. *Assault, what.*

ASSAULT, *assultus*, from the french *assayler*, is an attempt or offer, with force and violence, to do a corporal hurt to another; as by striking at him with or without a weapon; or presenting a gun at him, at such a distance to which the gun will carry; or pointing a pitch-fork at him, standing within the reach of it; or by holding up one's fist at him; or by any other such like act, done in an angry, threatening manner. 1 *Haw.* 133.

And from hence it clearly follows, that one charged with an assault and battery, may be found guilty of the assault, and yet acquitted of the battery: But every battery includes an assault; therefore on an indictment of assault and battery, in which the assault is ill laid, if the defendant be found guilty of the battery, it is sufficient. 1 *Haw.* 134.

Notwithstanding the many ancient opinions to the contrary, it seems agreed at this day, that no words whatsoever can amount to an assault. 1 *Haw.* 134.

II. *Battery,*

Assault and Battery.

II. Battery, what.

Battery (from the French *batre*, to strike, or the Saxon *batte*, a club) seems to be, when any injury whatsoever, be it never so small, is actually done to the person of a man, in an angry, or revengeful, or rude, or insolent manner; as by spitting in his face, or any way touching him in anger, or violently jostling him out of the way, and the like. 1 *Harw.* 134.

III. In what cases they may be justified.

A person may justify an assault, in defence of his person, or of his wife, or master, or parent, or child within age; and even a *wounding* may be justified in defence of his person, but not of his possessions. 3 *Salk.* 46.

Also if an officer having a lawful warrant lay hands on another to arrest him, or if a parent in a reasonable manner chastise his child, a master his servant, a schoolmaster his scholar, a gaoler his prisoner, and even a husband his wife as some say; or if one confine a friend who is mad, and bind and beat him in such a manner as is proper in his circumstances; or if a man force a sword from one who offers to kill another therewith; in all these cases, and such like, it is justifiable. 1 *Harw.* 130.

Likewise a person may justify in assault and battery of another, who doth menace or assault him, and attempt to beat him from his lawful watercourse or highway. *Pult.* 42.

Likewise, if a person comes into my house, and will not go out, I may justify laying hold of him, and turning him out. *Nels. Assault.*

And where a man in his own defence beats another who first assaults him, he may take an advantage thereof, both upon an indictment, and upon an action; but with this difference, that on an indictment he may give it in evidence upon the plea of not guilty, but on an action he must plead it specially. 1 *Harw.* 134.

IV. How punished.

There is no doubt but that the wrong-doer is subject both to an action at the suit of the party, wherein he shall render damages; and also to an indictment at the suit of the king, wherein he shall be fined according to the heinousness of the offence. 1 *Harw.* 134.

And by 6 *G. c.* 23. *f.* 11. Assaulting in the street or highway, with intent to spoil people's cloaths, and so spoiling them, is felony and transportation.

And by 7 *G. 2. c.* 21. Assaulting with intent to rob, is also made felony and transportation.

And by 9 *An. c.* 16. Assaulting a privy counsellor in the execution of his office, is felony without benefit of clergy.

A private assault is not inquirable in the leet, not being a common nuisance, as all affrays are. 1 *Harw.* 135.

Warrant

Affault and Battery.

77

Warrant for an affault.

Westmorland. } To the constable of——

WHereas complaint hath been made before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. I. of—— in the said county, taylor, that A. O. of—— aforesaid, butcher, did on the—— day of—— violently assault and beat him the said A. I. at—— aforesaid in the county aforesaid: These are therefore, in his said majesty's name, to command you forthwith to apprehend the said A. O. and to bring him before me to answer unto the said complaint, and to be further dealt withal according to law. Given under my hand and seal the—— day of &c.

Indictment for an affault.

THE jurors for our sovereign lord the king on their oath presented, that A. O. of—— in the said county, butcher, on the—— day of—— in the—— year of the reign of—— at—— aforesaid in the county aforesaid, in and upon A. I. taylor, then and there being in the peace of God and of our said lord the king, with force and arms, an assault did make, and him the said A. I. then and there did beat, wound, and evil intreat, and then and there to him other enormous things did, to the great damage and hurt of him the said A. I. and to the evil example of all others offending in the like kind, and against the peace of our said lord the king, his crown and dignity.

Affizes.

ALL justices of the peace of that county where the judges have their affizes, are bound to be present; and if they make default without lawful impediment, the judges may set a fine upon them for their neglect. *Wood 825.*

And they shall certify thither the bail and examination of felons, and information of witnesses against them; on pain of being fined by the judges. 1 & 2 P. & M. c. 13.

Attachment.

AN attachment is properly grantable in cases of contempts, against which for the most part all courts of record generally, but more especially those of *Westminster hall*, and above all the court of king's bench, may proceed in a summary manner, according to their discretion. 2 *Haw.* 141.

But

Attachment.

But in the case of *K. and Bartlett*, H. 8 G. 2. it is said, that generally the sessions have not a power to award an attachment; but the court said, they would not determine how it would have been, if they had committed the person for contempt; but the ordinary and proper method is, by indictment. *Seff. Ca. V. 2. 176.*

Attainder.

THE difference between a man attainted and convicted is, that a man is said to be convicted before he hath judgment, as if a man be convicted by verdict or confession; and when he hath his judgment upon the verdict or confession, then he is said to be attainted. 1 *Inst.* 390.

Attaint.

ATTAINT is a writ that lieth, where a false verdict in a court of record, upon an issue joined by the parties, is given. 1 *Inst.* 294. Which is treated of under title *Jurors*.

Attorney.

Derivation.

1. **A**TTORNEY is an ancient English word, and signifieth one that is set in the *turn*, stead, or place of another. 1 *Inst.* 51.

Acting before inrolled.

2. By the 2 G. 2. c. 23. (which by the 22 G. 2. c. 46. hath continuance to June 24. 1757, &c.) If any person shall act as attorney or solicitor, for gain or reward, without being duly admitted and inrolled; he shall forfeit 50*l.* with treble costs, to him who shall sue in 12 months in any court of record at *Westminster*, or at the assizes, or sessions where the offence shall be committed: and no proceedings thereupon shall be removed before judgment, or stayed by any *certiorari* or other writ. S. 24, 25.

Acting as a justice of the peace.

3. No attorney or solicitor shall be capable to continue or be a justice of the peace, during such time as he shall continue in the business and practice of an attorney or solicitor. 5 G. 2. c. 18. s. 2.

And if any person, not qualified according to the directions of this act, shall act as a justice of the peace; he shall forfeit 100*l.* half to the king, and half to him that shall sue in any court of record. S. 3.

4. No

4. No recusant convict shall practise as an attorney or solicitor; Acting being a recusant. on pain of 100*l.* in like manner. 3 *J. c.* 5. *f.* 8.

5. If any person who hath been convicted of forgery, perjury, Convicted of forgery, &c. or subornation, or common barratry, shall practise as an attorney or solicitor; he shall be transported for seven years. 12 *G. c.* 29.

f. 4.

6. If any person, not legally admitted as an attorney or solicitor, shall act as such in any county court; he shall forfeit 20*l.* with costs, to him who shall sue in 12 months in any court of record. 12 *G. 2. c.* 13. *f.* 7. Who may act as attorney in the county court.

7. No person shall act as attorney or solicitor, at any general or quarter sessions of the peace, unless he hath been admitted and enrolled in one of the courts of record at *Westminster*; on pain of 50*l.* with treble costs to him who shall sue in 12 months in any of the said courts at *Westminster*: and if any attorney shall permit any person to make use of his name in such sessions, he shall forfeit 50*l.* in like manner. 22 *G. 2. c.* 46. *f.* 12. Who may act as attorney in the sessions.

And no clerk of the peace, under-sheriff, or their deputies, shall act as solicitor, attorney, or agent at any general or quarter sessions; on like pain of 50*l.* *S.* 14.

8. If a sworn attorney be chosen constable, he may have a writ of privilege for his discharge, because of his personal attendance which is required in the courts wherein he is an attorney. How far exempted from offices. 2 *Harw.* 63.

And, more generally, it is said, that attorneys shall not be elected to any office without their own consent, by reason of their said attendance in the courts. *Cro. Car.* 11, 585.

Yet it hath been said, that an attorney shall not be excused by privilege from offices, which may be executed by deputy; but only those which require personal duty. *March* 30. 2 *Lill. Abr.* 374.

Award.

IT is judged not foreign to the office of a keeper of the peace, to have some knowledge of the law contained under this title: Concerning which we will shew,

- I. *What things may be submitted to arbitration.*
- II. *The several kinds of submission to arbitration.*
- III. *The award; and therein what shall be deemed a good award, and what not.*

I. *What things may be submitted to arbitration.*

1. It is held clearly, that all matters of controversy, either of Actions personal. fact, or of a right in things and actions personal and uncertain, may be submitted to arbitration. 9 *Co.* 78.

2. All

Matters of freehold.

2. All matters of freehold, or any right and title to a freehold, cannot be submitted to arbitrament; for a freehold is not transferable from one to another, without livery and seisin: Yet if there be a submission concerning the right, title, or possession of lands and tenements, and the parties enter into mutual bonds, to stand to the award made relating to them, they forfeit their bonds unless they obey it. 1 *Roll's Abr.* 242, 244. *Read. Arb.* Wood 920.

A thing certain.

3. A thing certain, as a debt due by bond or record, an annuity, and the like, cannot be submitted otherwise than by writing; and it is most advisable that the parties enter into bonds. 1 *Roll's Abr.* 264. *Cro. El.* 422.

Criminal offences.

4. Criminal matters, as treasons, murders, felonies, and other offences indictable at the suit of the king, cannot be submitted to arbitrament; for it is for the good of the common wealth, that such offenders be made known and punished: and the king in such cases is a party, for whom the other parties cannot undertake. *West. Symb. Part 2. f. 33.*

But if the party injured proceeds by way of action, as he may in assaults and batteries, libels, and the like; the damages he sustained, or expects to recover, may be submitted to arbitration: for in such case the action is for himself, and not for the king. *Compleat Arbitrator* 28.

Matrimonial causes.

5. Also matrimonial causes, or any thing concerning the contract or dissolution of marriage, cannot be submitted to arbitrament. 1 *Roll's Abr.* 252.

But the damages a person sustained by a promise of marriage, or any thing relating to a marriage portion, may be submitted. 16 *Ed.* 4. 2.

II. The several kinds of submission to arbitration.

By parol.

1. A submission by words is good, and the party in whose favour the award is made, hath a remedy to enforce a performance of it: Yet it is not expedient that any submission should be by parol, because the party may revoke it at pleasure, at any time before the award made, and that by word likewise; and the judges will rarely enforce the performance of an award, when either the submission or the award is by parol, because it lays so great a foundation for perjury. *Compl. Arb.* 21.

By covenant.

2. Submission may also be by covenant; but this method is seldom used: for tho' it contains the same certainty with a bond, yet the method of suing on a covenant is different, and more difficult than in suing on a bond. *Compl. Arb.* 7. 46.

By rule of court.

3. Submission by rule of court (A) is made in pursuance of the statute 9 & 10 *W. c.* 15. which enacteth as follows:

It shall be lawful for all merchants and traders, and others desiring to end any controversy, suit, or quarrel (for which there is no other remedy but by personal action, or suit in equity) by arbitration, to agree that their submission to the award or umpirage be made a rule of any of his majesty's courts of record, which the parties shall choose, and to insert such agreement in their submission, or the condition of the bond, or promise, whereby they submit

submit themselves: Which agreement being so made, and inserted in their submission or promise, or condition of their respective bonds, shall or may, on producing an affidavit thereof, made by the witnesses thereunto, or any one of them; in the court of which the same is agreed to be made a rule, and reading and filing the said affidavit in court, be entred of record in such court; and a rule shall thereupon be made in the said court, that the parties shall submit to, and finally be concluded by such arbitration or umpirage; and in case of disobedience to such arbitration or umpirage, the party neglecting or refusing to perform the same, or any part thereof, shall be subject to all the penalties of contemning a rule of court; and the court on motion shall issue process accordingly; which process shall not be stopped or delayed in its execution, by any order of any other court of law or equity, unless it shall be made appear on oath to such court, that the arbitrators or umpire misbehaved themselves, and that such award was procured by corruption, or other undue means.

And this is allowed to be the most expeditious way; and the method is to get a counsel to move in any of the courts to have it made a rule, which in such case is never denied; and then the party is liable to the same penalties that he would be for disobeying any other rule of court. *Compl. Arb.* 6. 47.

4. Or lastly, the submission may be by bond (B). In which By bond. case, each party must give to the other a bond; which bond, and condition, must contain exactly the same words, only changing the names of the parties. And the penalty of the bond should at least be the value of the thing submitted; so that the party may rather abide by the award, than forfeit his obligation. *Compl. Arb.* 46.

And undoubtedly a submission by bond in some respects, exceeds a submission by rule of court; for an award made pursuant to bonds of submission, may bind the parties executors; but if the party, who refuses to perform an award made pursuant to a rule of court, shall die, the act of parliament directing that the prosecution shall be carried on by attachment, the remedy being lost, the award is lost likewise. *Compl. Arb.* 34.

5. Sometimes the submission is both by bond and rule of court, Both by bond and by adding the party's consent at the bottom of the condition of rule of court. the bond; and this is still the best way, for then the party may proceed which way he pleases: and it is said, that he may proceed both ways; that is to say, both on the bond, and have an attachment likewise for the contempt. 1 *Salk.* 73.

6. But in which way soever the submission is made, the same Nevertheless may be revoked, tho' made irrevocable by the strongest words; for a man cannot by his own act, make such authority or power not countermandable, which by the law and in its own nature is countermandable. 8 *Co.* 82. Whether the submission may be countermanded.

But if the submission be by bond, if the party revokes, he forfeits his obligation, for that he hath broken the words of the condition, which are, that he shall stand to and abide the award. And if he revokes, he must likewise give notice of the revocation; and if the submission was by bond, the revocation must be in writing. 8 *Co.* 82.

And if the submission be made a rule of court, pursuant to the act of parliament; if either of the parties revokes, the court will grant an attachment. *Compl. Arb.* 82.

But if the submission be by word, the party may revoke at pleasure, and he forfeits nothing; but he must in this case likewise give notice of the revocation, tho' it need not be in writing: and the notice must be to the arbitrators themselves. 8 Co. 82.

III. The award (C); and therein what shall be deemed a good award, and what not.

Arbitrators cannot administer an oath.

Award best to be in writing.

Whether it shall be upon stamp.

Award to be according to the submission.

1. The arbitrators cannot injoin an oath to the witnesses, there being no law which gives them any such power.

2. It is highly convenient that the award be in writing, and so to be mentioned in the submission. *Compl. Arb.* 34.

3. It is not required by any of the stamp acts, that an award by name shall be on stamped paper or parchment; nor doth it seem to be comprehended under any description in the said acts, unless it be under these general words [*obligatory instrument*]; and if so, then it shall be on a double sixpenny stamp.

4. One thing essential to a good award, is, that it be made, with respect to persons and things, according to the submission. *Wood* 921.

Upon which ground, as the arbitrators are, with respect to the things submitted, circumscribed and tied down to the submission; so in several cases it has been disputed, whether their awarding releases to the time of the award, and not to the time of the submission, was good; it is therefore most advisable to award releases to the time of the submission; tho' it is now clearly held, that general releases shall extend only to the time of the submission, and that, if there be releases awarded to the time of the award, they shall be good, unless it be shewn on the other side, that some new matter hath arisen between the parties between the submission and award. 1 *Roll. Abr.* 242. 6 *Mod.* 34.

If the submission be, *so as the award be ready to be delivered to the parties or to such of them as shall desire the same*, the parties so bound are themselves obliged to take notice of the award at their peril; but if the words of the submission be, *so that the award be delivered to each party by such a day*, then it must be delivered to each party accordingly. *Read. Arb. Wood* 921.

But tho' the words of the submission may be such, as will oblige the parties to take notice of the award at their peril; yet if the arbitrators award that one of the parties shall do an act, which depends upon another first to be done of the other party, he must have notice of it; at least the party who would take advantage of it, must shew that he hath done what was necessary on his part. *Compl. Arb.* 12.

Award to be beneficial to either party.

5 Also, it is required, that the award be beneficial, and appoint something advantageous to either party; for an award of one side only, is not good: so if an award be, that one of the parties

parties shall go to *Rome*, when it appears that there is no advantage to the other party by his going, it is void. *Wood* 922.

So if a man and woman submit themselves to an award, it is no good award that they shall *intermarry*, for this is not intended any advantage. 1 *Roll. Abr.* 252.

6. Also it is required in a good award, that it be possible and lawful. *Wood* 922. Award to be possible and lawful.

Thus, if an award be, that one of the parties shall kill, steal, forge a deed, or the like, it is void. 1 *Inst.* 206.

In like manner, if it be awarded, that money shall be paid to an infant, and that he shall make a release, it is void; for the infant's release is not good in law. 1 *Jon.* 165.

Also it is held, that where a thing is awarded to be done, which afterwards becomes impossible by the act of God, the party is excused; as if an award be, to deliver a horse before such a day, and he dies before that day. 21 *Ed.* 4. 70.

7. Also, it is required, that the award be certain and final. *Wood* 922.

Upon which ground it hath been resolved, that if the arbitrators award, that one of the parties beg the other's pardon before such a mayor, or such and such persons, it is good and certain enough; but if the award be, that he shall beg pardon in such manner and in such place as the other party shall appoint, it is not good: for the arbitrators are to determine, and not to make such party his own judge in his own cause. And tho' the time and place be but circumstances, yet in this sort of satisfaction they make the most considerable part. 1 *Salk.* 71. Award to be certain and final.

Upon which ground also, the arbitrators cannot regularly reserve any thing for their future judgment, when the time allowed them is expired; for then such their award is not certain and final. *Cro. Jac.* 585.

8. But if these things are observed, the award shall be expounded according to the intent of the arbitrators, and not literally, and shall not be unravelled in a court of equity, unless there was corruption in the arbitrators. 10 *Co.* 57. *Wood* 922. Award to be construed favourably, except in case of partiality or corruption.

But in the case of corruption, or other unfair practice, it is enacted by the aforesaid statute of 9 & 10 *W. c.* 15. that any arbitration or umpirage procured by corruption or undue means, shall be deemed void, and accordingly be set aside by any court of law or equity, so as complaint thereof be made in the court where the rule is made, before the last day of the next term after publishing the arbitration. S. 2.

But generally, as the arbitrators are persons of the parties own chusing, and as the law presumes that every man will be so wise as to pitch upon a person whose understanding and honesty he can rely on; it hath seldom happened, that an award was held void when there appeared nothing else to vitiate it, especially in a court of law: yet awards have been, and are often set aside in a court of equity, for corruption and want of understanding in the arbitrators. *Compl. Arb.* 73.

Therefore it is the interest of both parties, to chuse men of honesty and understanding to be their arbitrators, and to acquaint them truly with the facts they are to go upon; for if they appear to be mistaken in a matter of fact, a court of equity will set aside the award. *2 Vern. 705.*

But a bare suggestion of want of understanding, or want of honesty, will not be sufficient; the proof must be strong, and the rather, because (as was said) they are of the party's own chusing, who by his choice of them, admitted them to be wise and honest enough for his purpose. *Compl. Arb. 74.*

If a submission is to three arbitrators, or any two of them, and two of them by fraud or force will exclude the other; that alone is sufficient to vitiate the award: or if they have private meetings, and admit one of the parties, but give no notice to the other, but suffer the attorney of the party whom they admitted, to draw up the award; such award shall be set aside for partiality and unfairness. *2 Vern. 514.*

It is a general rule in equity, that when it appears that any one of the arbitrators were any way *interested* in the matters in controversy, the award is to be set aside. *Compl. Arb. 75.*

And it is the strongest argument of partiality, to shew that the arbitrators received from either of the parties any considerable sum of money, or any other present which may be a temptation to act corruptly; but the sum or present must be proved to be so exorbitant, as to induce the court to believe that it biased their judgments; otherwise it will be of no effect. *Compl. Arb. 76.*

Where the award appoints no time, the thing is to be done immediately.

9. If the arbitrators award a thing to be done, it may be proper for them to appoint a time and place for the doing of it; and the party who would take advantage of it, must shew that he has done what was requisite on his part: but if a thing is to be done generally, without mentioning time and place, it shall be done immediately. *2 Brown. 311.*

Demand to be before attachment.

10. If the submission is by rule of court, it is necessary that there be a personal demand of the thing awarded; and the party must make affidavit of such demand, before he can have an attachment. *1 Salk. 83.*

On tender and refusal, the party refusing shall nevertheless sign a release.

11. If a sum of money be awarded to one of the parties, and that upon the payment thereof they both shall give mutual releases; if he who is to receive the money, refuses it, yet upon a tender and refusal, he is as much obliged to sign a release as if he actually received it. *1 Salk. 75.*

A. Form of a submission by rule of court.

WHEREAS divers disputes and controversies have arisen, and are now depending, between A. B. of ——— in the county of ——— yeoman, of the one part, and C. D. of ——— in the said county, yeoman, of the other part, touching and concerning ——— Now for the ending and deciding thereof, it is hereby mutually agreed by and between the said parties, that all matters in difference between them for, touching, and concerning all and every the matters and things herein above specified and particularly

cularly mentioned, shall be referred and submitted to the arbitrament, final end, and determination of A. A. of ——— in the said county, gentleman, B. A. of ——— in the said county, yeoman, and C. A. of ——— in the said county, yeoman, or any two of them, arbitrators indifferently elected by the said parties, so as the said arbitrators, or any two of them, do make and publish their award in writing ready to be delivered to the said parties, or such of them as shall desire the same, on or before the ——— day of ——— next ensuing the date hereof: And it is hereby mutually agreed by and between the said parties, that this submission shall be made a rule of his majesty's court of king's bench at Westminster. In witness whereof the said parties to these presents have herunto set their hands this ——— day of ——— in the ——— year &c.

B. Arbitration bond.

K NOW all men by these presents, that I A. B. of ——— in the county of ——— gentleman, am held and firmly bound to C. D. of ——— in the said county of ——— yeoman, in ——— pounds of good and lawful money of Great Britain, to be paid to the said C. D. or to his certain attorney, his executors, administrators, or assigns: To which payment well and truly to be made, I bind my self, my heirs, executors, and administrators firmly by these presents, sealed with my seal, and dated the ——— day of ——— in the ——— year of the reign of our sovereign lord George the second, of Great Britain, France and Ireland, king, defender of the faith, and so forth, and in the year of our lord ———.

Condition to stand to the award of two arbitrators, in common form:

T HE condition of the above obligation is such, that if the above bound A. B. his heirs, executors, and administrators, and every of them, for and on his and their parts and behalfs, do and shall well and truly stand to, obey, abide, perform, observe and keep the award, order, arbitrament, final end and determination of A. A. of ——— esquire, and B. A. of ——— gentleman, arbitrators indifferently named, elected, and chosen, as well for and on the part and behalf of the abovebound A. B. as of the abovenamed C. D. to arbitrate, award, order, adjudge and determine of and concerning all and all manner of action and actions, cause and causes of action and actions, suits, bills, bonds, specialties, judgments, executions, extents, accounts, debts, dues, sum and sums of money, quarrels, controversies, trespasses, damages and demands whatsoever, both in law and equity, or otherwise howsoever, which at any time or times heretofore have been had, made, moved, brought, commenced, sued, prosecuted, committed, omitted, done or suffered by or between the said parties, so as the said award be made in writing, and ready to be delivered to the said parties, on or before the ——— day of ——— now next ensuing, then this obligation to be void, otherwise of force.

Award.

If the parties have a mind to make their submission a rule of court, then this may be added:

And the abovebound A. B. doth agree and desire, that this his submission be made a rule of his majesty's court of King's Bench at Westminster, pursuant to the act of parliament in such case made and provided.

Condition to stand to the award of three arbitrators, or any two of them, and an umpire appointed:

THE condition of this obligation is such, that if the abovebound A. B. his heirs, executors, and administrators, for and on his and their parts and behalfs, shall and do well and truly stand to, obey, abide, observe, perform, fulfil, and keep the award, order, arbitrament, final end and determination of ——— or any two of them, arbitrators indifferently elected and named, as well by and on the part and behalf of the said A. B. as by and on the part and behalf of the abovenamed C. D. to arbitrate, award, order, judge and determine, of and concerning all and all manner of action and actions, cause and causes of action and actions, suits, bills, bonds, specialties, covenants, contracts, promises, accounts, reckonings, sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages and demands whatsoever, at any time heretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed, or depending by or between the said parties; so as the award of the said arbitrators, or any two of them, be made and set down in writing, under their or any two of their hands and seals, ready to be delivered to the said parties in difference, on or before the ——— day of ——— now next ensuing; then this obligation to be void, otherwise of force.

And if the said arbitrators shall not make such their award of and concerning the premisses, within the time limited as aforesaid, then if the said A. B. his heirs, executors, and administrators, for and on his and their part and behalf, do and shall well and truly stand to, observe, perform, fulfil and keep the award, determination, and umpirage [if the umpire be named] of ——— being a person indifferently named and chosen between the said parties, for umpire; [if not named] of such person as the said arbitrators shall indifferently chuse for umpire in and concerning the premisses; so as the said umpire do make and set down his award and umpirage in writing, under his hand and seal, ready to be delivered to the said parties in difference, on or before the ——— day of ——— now next ensuing: Then this obligation to be void, otherwise of force.

[And the abovebound A. B. doth agree and desire, that this his submission be made a rule of his majesty's court of king's bench at Westminster, pursuant to the act of parliament in such case made.]

C. Form of an award.

TO all to whom these presents shall come, we A. B. of ———
and C. D. of ——— do send greeting.

Whereas there are several accounts depending, and divers controversies have arisen, between ——— of ——— yeoman, of the one part, and ——— of ——— yeoman, of the other part; And whereas, for the putting an end to the said differences, they the said ——— and ——— by their several bonds or obligations bearing date ——— last past, are reciprocally become bound each to the other, in the penal sum of ——— to stand to, abide, perform, and keep the award, order, and final determination of us the said ——— so as the said award be made in writing and ready to be delivered to the parties in difference on or before ——— next ensuing, as by the said obligations and conditions thereof may appear: Now know ye, that we the said arbitrators, whose names are hereunto subscribed, and seals affixed, taking upon us the burden of the said award, and having fully examined and duly considered the proofs and allegations of both the said parties, do make and publish this our award between the said parties in manner following; that is to say, First, we do award and order, that all actions, suits, quarrels, and controversies whatsoever, had, moved, arisen, and depending between the said parties in law or equity, for any manner of cause whatsoever touching the said premisses, to the day of the date hereof, shall cease and be no farther prosecuted; and that each of the said parties shall pay and bear his own costs and charges in any wise relating to, or concerning the premisses. And we do also award and order, that the said ——— shall deliver or cause to be delivered to the said ——— at ——— within the space of ——— &c. And further, we do hereby award and order, that the said ——— shall on or before ——— pay or cause to be paid unto the said ——— the sum of ——— We do also award and order &c. And lastly, We do award and order, that the said ——— and ——— on payment of the said sum of ——— shall in due form of law, execute each to the other of them, or to the other's use, general releases, sufficient in the law for the releasing by each to the other of them, his heirs, executors, and administrators, of all actions, suits, arrests, quarrels, controversies, and demands whatsoever, touching or concerning the premisses aforesaid, or any matter or thing thereunto relating, from the beginning of the world, until the ——— day of ——— last past (viz. the day of the date of the arbitration bonds). In witness whereof we have herunto set our hands and seals the ——— day of ———.

Form of an umpirage.

(RECITE the arbitration bonds, as before) Now know ye, that I ——— umpire indifferently chosen by ——— having deliberately heard and understood the griefs and allegations and proofs of both the said parties, and willing (as much as in me lieth) to set the said parties at unity and good accord, do by these presents arbitrate, award, order, decree, and judge as followeth; That is to say, &c.

Bail.

Badger of Corn. See **Corn.**

Bail.

- I. What it is.*
- II. Difference between bail and mainprise.*
- III. When a person may be discharged without bail.*
- IV. Who may or may not be bailed.*
- V. Who may bail, and the manner of it.*
- VI. Requiring excessive bail.*
- VII. Denying bail where it ought to be granted.*
- VIII. Granting bail where it ought to be denied.*
- IX. Of bail by writ of habeas corpus.*
- X. Acknowledging bail in another man's name.*

I. What it is.

BAIL signifies the delivery of a man out of custody, upon the undertaking of one or more persons for him, that he shall appear at a day limited, to answer and be justified by the law. *Hale's Pl. 96.*

II. Difference between bail and mainprise.

The difference between bail and mainprise is, that mainpernors are only surety, but bail is a custody; and therefore the bail may retake the prisoner, if they doubt he will fly, and detain him, and bring him before a justice, and the justice ought to commit the prisoner in discharge of the bail, or put him to find new sureties. *Hale's Pl. 96.*

III. Where a person may be discharged without bail.

If a person be brought before a justice, if it appears that no felony is committed, he may discharge him; but if a felony be committed, tho' it appears not that the party accused is guilty, yet he cannot discharge him, but must commit or bail him. *Hale's Pl. 98.*

IV. Who may or may not be bailed.

At the common law, bail was allowed in all cases but homicide; but now the statute of the 3 Ed. 1. c. 15. directeth what offenders shall be bailed, and what not. *Hale's Pl. 97.*

It is true, the said statute only prescribeth, who shall or shall not be let to bail by the *sheriff*; but by the 1 & 2 P. & M. c. 13. it is enacted, that no justice or justices of the peace shall let to bail or mainprise any person not replevisable by the said statute of 3 Ed. 1. c. 15.

Which statute is as follows: *Forasmuch as sheriffs and others, which have taken and kept in prison persons detected of felony, and incontinent have let out by replevin such as were not replevisable, and have kept in prison such as were replevisable, because they would gain of the one party and grieve the other; and forasmuch as before this time it was not determined which persons were replevisable, and which not, but only those that were taken for the death of man, or by commandment of the king, or of his justices, or for the forest: It is provided, that such prisoners as before were outlawed, and they which have abjured the realm, provors, and such as be taken with the manner, and those which have broken the king's prison, thieves openly defamed and known, and such as be appealed by provors so long as the provors be living, (if they be not of good name,) and such as be taken for houseburning feloniously done, or for false money, or for counterfeiting the king's seal, or persons excommunicate taken at the request of the bishop, or for manifest offences, or for treason touching the king himself, shall be in no wise replevisable by the common writ, nor without writ. But such as be indicted of larceny by inquests taken before sheriffs or bailiffs by their office, or of light suspicion, or for petit larceny, that amounteth not above the value of 12d. if they were not guilty of some other larceny aforetime, or guilty of receipt of felons, or of commandment, or force, or of aid in felony done, or guilty of some other trespass for which one ought not to lose life nor member, and a man appealed by a provor after the death of the provor (if he be no common thief nor defamed), shall from henceforth be let out by sufficient surety, whereof the sheriff will be answerable, and that without giving ought of their goods.*

Sheriffs and others] That is to say, sheriffs and gaolers that have custody of gaols; so that this act extends not to any of the king's justices or judges of any superior courts of justice. 2 Inst. 185. But by a subsequent statute (as hath been said) it is extended to justices of the peace.

But only those, &c.] Here are first set down four sorts of persons which before this act were not bailable by the common writ *de homine replegiando*:

1. *Those that were taken for the death of a man]* By the ancient law of the land, in all cases of felony, if the party accused could find sufficient sureties, he was not to be committed to prison; but afterwards it was provided by parliament, that in case of homicide the offender was not bailable. 2 Inst. 186.

And even if a person hath dangerously wounded another, the justice ought to be very cautious how he takes bail, till the year and day be past; for if the party die, and the offender appear not, he is in danger of being severely fined. 1 Harw. 138.

And this statute makes no distinction between such homicide as is malicious, and that which happens by misadventure or in self defence:

defence : And it seems agreed, that justices of the peace, who have power at this day to bail a man arrested for a *light suspicion* of homicide, cannot bail any such person for manslaughter, or even excusable homicide, if it manifestly appear that he was guilty of the fact, let it be ever so plain that it cannot amount to murder. 2 *Haw.* 95, 105.

2. *Or by commandment of the king*] That is, by matter of record in one of his courts, according to law ; and not an extrajudicial commandment. 2 *Inst.* 186, 187. So also it is provided in the petition of rights 3 *Car.* that no person shall be detained in prison by the king's special command, without cause certified.

And because some courts, as the king's bench, are before the king, and some before his justices, therefore the act saith, *by commandment of the king*, and the next words be, *or of his justices*. 2 *Inst.* 186.

3. *Or of his justices*] That is, of any of the courts of *Westminster*, or justices of assize. 2 *Haw.* 96.

4. *Or for the forest*] But as to imprisonment for offences in forests, the law hath been much mitigated by later statutes. 2 *Haw.* 98.

All these four are excepted out of the common writ *de homine replegiando*, that the sheriff in his county court, which is not a court of record, shall not replevy any of these four that are committed, altho' it should be by an unlawful commitment ; but the superior courts at *Westminster*, upon an *habeas corpus*, shall do justice to the party in all these four cases. 2 *Inst.* 187.

Next, the act doth further provide, that these kinds of prisoners hereafter following (being 13 in number) shall not be replevisable :

1. *Such prisoners as before were outlawed*] Persons outlawed are *attainted* in law, and therefore are notailable ; for the intentment of the law is, that the person standeth indifferent whether he be guilty or no ; and not if he be convicted or *attainted*. 2 *Inst.* 188.

2. *And they which have abjured the realm*] For these also are *attainted* upon their own confession, and therefore notailable at all by law. 2 *Inst.* 188.

3. *Provors*] A provor, or *approver*, is a person that confesseth the felony with which he is charged, and undertakes to *prove* another guilty of the same crime ; which if he does, he saves his own life, otherwise he shall be immediately executed. And the reason why they are notailable is, because they are guilty by their own confession, and therefore they do not stand indifferent. 2 *Inst.* 188.

But this concerns not justices of the peace, because no man can become an approver before them, for that they cannot assign a coroner. *Hale's Pl.* 102.

4. *And such as be taken with the manner*] For in this case likewise, he standeth not indifferent whether he be guilty or no, being taken with the *mainer*, that is, with the thing stolen as it were in his hand, anciently called *bandhabbend*, and the like was anciently called

called *backberend*, as a bundle or fardle at his back; which was used to signify manifest theft. 2 *Inst.* 188.

5. *And those which have broken the king's prison*] Here are two offences; first, his breaking of the prison, for it is presumed that he who is innocent will never break prison: and secondly, his flying, because he confesseth the fact who flies from judgment. 2 *Inst.* 188.

6. *Thieves openly defamed and known*] Who, as it seems, ought not to be bailed for any fresh felony, whereof there is probable evidence against them. But this seems in a great measure to be left to the discretion of the person who has power to bail them, who on consideration of the circumstances of the whole matter, and the probabilities on both sides, if he finds it reasonable strongly to presume them to be guilty, ought not to bail but commit them. 2 *Haw.* 99.

7. *Such as be appealed by provors, so long as the provors be living, if they be not of good fame*] The appeal of the approver is forcible against the appellee, because the approver confesseth himself guilty of the same felony, and therefore it serveth in nature of an indictment against the appellee, so long as the approver liveth, unless the appellee be of good fame. 2 *Inst.* 188.

8. *And such as be taken for houseburning feloniously done*] This was felony by the common law. 2 *Inst.* 188.

9. *Or for false money*] This was treason by the common law. 2 *Inst.* 188.

10. *Or for counterfeiting the king's seal*] This was also treason by the common law. 2 *Inst.* 188.

11. *Or persons excommunicate, taken at the request of the bishop*] That is, he that is certified into the chancery by the bishop to be excommunicated, and after is taken by force of the king's writ of *excommunicato capiendo*, is notailable: For in ancient time men were excommunicated but for heresies, or other heinous causes of ecclesiastical cognizance, and not for small or petty causes; and therefore in those cases the party was notailable by the sheriff or gaoler without the king's writ; but if the party offered sufficient caution *de parendo mandatis ecclesiae in forma juris*, then should the party have the king's writ to the bishop to accept his caution, and to cause him to be delivered: And if the bishop will not send to the sheriff to deliver him, then shall he have a writ out of the chancery to the sheriff for his delivery: Or if he be excommunicated for a temporal cause, or for a matter whereof the ecclesiastical court hath no cognizance, he shall be delivered by the king's writ without any satisfaction. 2 *Inst.* 189.

12. *For manifest offences*] Which seems to be understood of inferior crimes of an enormous nature under the degree of felony; as dangerous riots, exorbitant rescoues, misprision of treason, *præmunire*, and such like heinous offences. Yet it seems to be in a great measure left to discretion, to judge in what cases their crime

crime is so flagrant and enormous, that they ought not to have the benefit of it. 2 *Haw.* 99.

13. *Or for treason touching the king himself*] By the common law, a man accused or indicted of high treason, or of any felony whatsoever, was bailable upon good surety, until he were convicted; for at common law, the gaol was his pledge or surety, that could find none. 2 *Inst.* 189.

Shall be in no wise replevisable by the common writ, nor without writ] That is, the sheriff shall not replevy them by the common writ *de homine replegiando*, nor without writ, that is, *ex officio*: But all or any of these may be bailed in the king's bench. 2 *Inst.* 189.

Next the act setteth down seven kinds of offenders that may be bailed:

1. *Such as be indicted of larceny by inquests taken before sheriffs or bailiffs*] That is, before sheriffs in their torns, or lords in their leets, or those that have *insfangthief* and *outfangthief*. Yet this is expounded that they be of good fame. 2 *Inst.* 190.

2. *Or of light suspicion*] But if the presumption be strong, or the defamation great, the justices may refuse to bail him. *Hale's Pl.* 102. And this is expounded also that they be of good fame. 2 *Inst.* 190.

3. *Or for petit larceny that amounteth not above the value of 12 d. if they were not guilty of some other larceny aforesaid*] This act divideth larceny into two kinds; grand larceny, when the thing stolen is above the value of 12 d. and petit larceny, when it is of the value of 12 d. or under. 2 *Inst.* 189.

And it seems to be agreed, that there is no necessity that such persons be of good fame; yet upon the construction of the whole statute, if such persons be taken with the manner, or confess the fact, or their crime be otherwise open and manifest, it seems that they ought not to be bailed; but if there be any colour of probability for their innocence, it seems most agreeable to the intention of the statute to bail them. 2 *Haw.* 101.

4. *Or guilty of receipt of felons*] These are accessaries after the fact. 2 *H. H.* 100.

5. *Or of commandment, or force, or of aid in felony done*] These are accessaries before the fact. 2 *H. H.* 100.

But accessaries to felonies are not to be bailed, unless they be of good reputation: And it seems at this day to be settled, that where there are strong presumptions of guilt, such accessaries are not bailable by this statute. 2 *Haw.* 102.

6. *Or guilty of some other trespass, for which one ought not to lose life nor member*] But it seems reasonable to qualify the generality of this expression, with this limitation, that such accusation ought to be either on a light suspicion, or else that the offence be inconsiderable, or that it be not excluded from bail by some special act of parliament. 2 *Haw.* 99. 2 *H. H.* 135.

7. *And a man appealed by a provor, after the death of the provor, if he be no common thief, nor defamed*] And by parity of reason, he may be bailed, if the approver waive his appeal, or be vanquished. 2 *Haw.* 98.

Be let out by sufficient surety] If a justice take insufficient surety, and the party appear not, he is finable by the judge of assize. *H. P.* 97. But if the prisoner appear thereupon, the justice is safe. 2 *Haw.* 89.

And if a person who has power to take bail, be so far imposed upon, as to suffer a prisoner to be bailed by insufficient persons, it is said, that either he, or any other person who hath power to bail him, may require the party to find better sureties, and to enter into a new recognizance with them, and may commit him on his refusal, for that insufficient sureties are no sureties. 2 *Haw.* 89.

And the person who is to take the bail, may examine them on their oaths concerning their sufficiency. 2 *Haw.* 89. 2 *H. H.* 125.

It is to be observed, that the abovesaid statute extends only to bail in criminal offences, and therefore gives no power at all to justices of the peace to bail any persons on process in civil actions, or for contempts to superior courts. 2 *Haw.* 106.

There are furthermore many statutes, which prohibit bail and mainprise in very many cases, and allow the same in many others, which are interspersed among the several titles which treat of those matters.

And where a statute ordaineth, that an offender shall be imprisoned at the king's will or pleasure, there the prisoner cannot be bailed, till he hath redeemed his liberty by such fine or ransom as shall be assessed by the king's justices in his courts. *Dalt.* c. 167.

Altho' a person be committed to be detained without bail or mainprise, yet if the offence be by law bailable, he that hath power of bailing may bail him. 2 *H. H.* 135.

V. *Who may bail, and the manner of it.*

By the common law, the sheriff and every constable, being conservators of the peace, might have bailed one suspected of felony; but this authority is transferred from them to the justices of the peace by several statutes. *Lamb.* 15.

And it seems to be a good general rule, that so far as any persons are judges of any crime, so far they have power of bailing a person indicted before them of such crime: And upon this ground it seems clear, that any two justices (1 *Q.*) may of common right bail persons indicted at the sessions, for that any two such justices may hear and determine the indictment. Also it hath been holden, that any one justice hath the like power; and this seems to be implied by the statute of 1 *R.* 3. c. 3. which giving one justice power of bailing persons arrested for felony, *in like form as if such persons had been indicted at the sessions*, clearly supposes, that if such persons had been indicted at the sessions, they might have been bailed by any one justice. And if any one justice had such power, before

before the statutes specially relating to the power of justices in granting bail, it seems that he hath still the same power in relation to persons so indicted of anyailable crime under the degree of felony, because the said statutes seem not to restrain him in any such case, under the degree of felony, from any power which he lawfully might claim before. 2 Haw. 103.

But it seems difficult to maintain the power of one justice to bail a person, for any crime *before* indictment, unless by some statute it be limited to the consuance of one justice, or unless it be an offence directly tending to the breach of the peace, the bailing of persons for which seems properly to come under their consuance as conservators of the peace. 2 Haw. 105.

And Mr. Dalton says, if it is not in case of felony, it seemeth that any one justice alone may bail a prisoner, except where it is otherwise ordered in particular instances by some special statute. *Dalt. c. 12.*

And it seems to be agreed, that any one justice might always in his discretion either bail or imprison one who has given another a dangerous wound, according as it shall appear from the whole circumstances that the party is most likely to live or die; for that every such justice being a principal conservator of the peace, the offence at present being only an enormous breach thereof, and no felony, seems properly to come under his consuance. 2 Haw. 103.

But by 1 & 2 P. & M. c. 13. *If a person be arrested for manslaughter, or felony, or suspicion thereof, beingailable by law, he shall not be let to bail or mainprise by any justices, but in open sessions, except it be by two justices at the least (12.), and the same to be present together at the time of the said bailment: Which bail they shall certify in writing subscribed or signed with their own hands, at the next general gaol delivery to be holden within the county where the person shall be arrested or suspected.*

And the said justices, or one of them, being of the Quorum, when any such prisoner is brought before them, for any manslaughter or felony, before any bailment, shall take the examination of the said prisoner, and information of them that bring him, of the fact and circumstances thereof, and the same or as much thereof as shall be material to prove the felony, shall put in writing before they make the bailment: Which examination together with the bailment; the said justices shall certify at the next general gaol delivery to be holden within the limits of their commission.

And the said justices shall have power to bind all such by recognizance as do declare any thing material to prove the offence, to appear at the next general gaol delivery, to give evidence against the party on his trial: And shall certify the same in like manner.

And any justice offending contrary to this act, shall on due proof by examination, be fined by the judges of assize.

But in London, Middlesex, and in other cities and towns corporate, justices may let prisoners to bail, as they might before this act; but when they do bail, they are to take and certify the bail and examination as is here directed.

VI. Requiring excessive bail.

By the declaration of rights 1 *W. Sess. 2. c. 2.* Excessive bail ought not to be required.

VII. Denying bail where it ought to be granted.

To refuse bail where the party ought to be bailed (the party offering the same) is a misdemeanor punishable not only by the suit of the party, but also by indictment 2 *Haw. 90. H. P. 97.*

VIII. Granting bail where it ought to be denied.

Admitting bail where it ought not, is punishable by the judges of assize by fine; or punishable as a negligent escape at common law. *H. P. 97.*

If the keeper of a prison bail any not bailable, he shall lose his fee and office; if another officer, he shall have three years imprisonment, and make fine at the king's pleasure. 3 *Ed. 1. c. 15.*

IX. Of bail by writ of habeas corpus.

If bail cannot otherwise be obtained, the law hath provided a remedy in most cases by the *habeas corpus* act 31 *C. 2. c. 2.* The substance of which is briefly thus:

If the commitment is for treason or felony, plainly and specially expressed in the warrant of commitment; also if any person is committed and charged as accessory before the fact to any petty treason or felony, or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment: In such cases the person shall not be bailed on a writ of *habeas corpus*; otherwise he may be bailed.

Also if a person is committed for treason or felony specially expressed, yet if he shall in open court the first week of the term, or first day of assize, petition to be tried, and shall not be indicted sometime in the next term or assize after the commitment, he shall upon motion the last day of the term or assize, be bailed, unless it shall appear to the judge upon oath that the king's witnesses could not be produced within that time, and then if he is not tried in the second term or assize, he shall be discharged.

Previous to the aforesaid bailment, the prisoner or some person on his behalf, shall demand of the officer or keeper, a true copy of the warrant of commitment, which he shall deliver in six hours, on pain of 100*l.* to the party grieved, for the first offence, and 200*l.* and forfeiture of his office for the second.

Then application is to be made in writing, by the prisoner or any person for him, attested and subscribed by two witnesses who were present at the delivery thereof, to the court of chancery, king's bench, common pleas, or exchequer, or if out of term time, to the lord chancellor or one of the judges; and a copy of the war-

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rant of commitment shall be produced before them, or oath made that such copy was denied.

But if any person hath wilfully neglected by the space of two terms to apply for his enlargement, he shall not have a habeas corpus granted in the vacation.

This being done, the lord chancellor, or judges respectively, shall award an habeas corpus under the seal of the court, on pain of 500 l. to be marked in this manner, *Per statutum tricesimo primo Caroli secundi Regis*, and signed by the person that awards the same; and shall be directed to the officer or keeper, returnable immediate.

And the charges of bringing the prisoner shall be ascertained by the judge or court that awarded the writ, and indorsed thereon, not exceeding 12 d. a mile.

Then the writ shall be served on the keeper, or left at the gaol with any of the under officers; and the charges so indorsed, shall be paid or tendered to him, and the prisoner shall give bond to pay the charges of carrying him back if he shall be remanded, and that he will not make any escape by the way.

[Charges] It is no excuse for not obeying a writ of habeas corpus *ad subjiciendum*, that the prisoner did not tender the fees due to the gaoler: Also it seems the better opinion, that the want of such a tender is no excuse for not obeying a writ of habeas corpus *ad faciendum & recipiendum*; however it is certain, that if the gaoler bring up the prisoner by virtue of such habeas corpus, the court will not turn him over till the gaoler be paid all his fees; nor, as some say, till he be paid all that is due to him for the prisoner's diet, for that a gaoler is compellable to find his prisoners sustenance; but this is denied by others. 2 Haw. 151.

This done, the officer shall within three days after service (if it is within twenty miles) return the writ, and bring the body, and shall then likewise certify the true cause of the imprisonment; if above twenty miles, and less than an hundred, then within ten days; if above an hundred, then within twenty days; on like pain as before.

But after the affizes are proclaimed for the county where the prisoner is detained, he shall not be removed.

Then if it shall appear to the said lord chancellor or judges, that the prisoner is detained on a legal process, order, or warrant, out of some court that hath jurisdiction of criminal matters, or by warrant of a judge or justice of the peace for matters for the which by law he is not bailable; in such case the prisoner shall not be discharged.

If he shall be discharged, he shall thereupon enter into recognizance to appear on his trial; and the writ, and return thereof, and recognizance shall be certified into the court where the trial must be.

But persons charged in debt, or other action, or with process in any civil cause, after their discharge for a criminal offence, shall be kept in custody for such other suit.

And persons so set at large, shall not be re committed for the same offence, unless by order of court; on pain of 500 l. to the party grieved.

Two things I shall observe upon this statute :

1. That altho' the constable by his own authority, without any warrant of commitment, may carry an offender to gaol, and this was the method of securing prisoners, before that there were any justices of the peace; yet since the institution of that magistrate, it is better that they be carried before him, to be sent by him to gaol by warrant of commitment; otherwise they have a right to be bailed upon this act, whatever the offence may be.

2. That the warrant of commitment ought to set forth the cause specially; that is to say, not for treason or felony in general, but treason *for counterfeiting the king's coin*, or felony *for stealing the goods of such a one to such a value*, and the like; that so the court may judge thereupon, whether or no the offence is such, for which a prisoner ought to be admitted to bail.

X. Acknowledging bail in another man's name.

By the 21 J. c. 26. If any person shall acknowledge, or procure to be acknowledged, any bail in the name of any other not privy to the same; he shall be guilty of felony without benefit of clergy.

But bail taken before a judge is not within this statute, till it be filed of record. 1 H. H. 696. But it is within the following statute of 4 W. c. 4. by which it is enacted, that any who shall personate another before those who have authority to take bail, so as to make him liable to the payment of any sum of money in that suit or action, shall be guilty of felony (but within clergy).

Form of bail.

Westmorland. **B**E it remembred, that on the ——— day of ——— in the ——— year of the reign of ——— A. O. of ——— yeoman, A. B. of ——— yeoman, and B. B. of ——— yeoman, came before us John Moore, esquire, and Richard Burn, clerk, two of his majesty's justices of the peace in and for the said county, one whereof is of the Quorum, and severally acknowledged themselves to owe to our said lord the king, that is to say, the said A. O. 20l. and the said A. B. and B. B. 10l. each, to be respectively levied of their lands and tenements, goods and chattels, if the said A. O. shall make default in the performance of the condition indorsed, [or, underwritten].

John Moore,
Richard Burn.

The condition of this recognizance is such, that if the within [above] bound A. O. shall personally appear before the justices of our sovereign lord the king assigned to keep the peace within the said county, and likewise to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at the next general quarter sessions of the peace [or, before his majesty's justices of gaol delivery, at the next general gaol delivery] to be holden in and for the said county, then and there to answer to our said sovereign lord the king, for and concerning the felonious taking and stealing of

the property of A. M. of ——— yeoman, with the suspicion whereof the said A. O. stands charged before us the said justices, and to do and receive what shall by the court be then and there enjoined him, and shall not depart the court without licence, then the above [within] written recognizance shall be void.

Or if the party is in prison, and so absent, Lord Hale says, this is the true form from Lambard.

Westmorland. **B**E it remembered, that on the ——— day of ——— in the ——— year of the reign of ——— before us John Moore, esquire, and Richard Burn, clerk, two of the justices of our said lord the king, assigned to keep the peace within the said county, and one of us of the Quorum, at Grimeshill in the said county, did come A. B. and B. B. of ——— in the said county, yeomen, and took in bail until the next gaol delivery to be holden in the said county, one A. O. of ——— labourer, taken and detained in prison for suspicion of a certain felony in stealing ——— the property of ——— and took upon themselves each of the said A. B. and B. B. under the penalty of 20l. of good and lawful money of Great Britain, of the goods and chattels, lands and tenements, of them and each of them, to the use of our said lord the king, his heirs and successors, to be levied, if the said A. O. shall not personally appear at the said next gaol delivery, before the justices of our said lord the king, assigned to deliver the said gaol, to stand to right concerning the felony aforesaid, according to the law and custom of England. Given under our seals &c.

But the seal need not be, for they are judges of record; only it may be barely subscribed by them: or thus,

Taken and acknowledged the day and
year abovewritten, before us the
abovesaid

John Moore,
Ri. Burn.

And hereupon a warrant issues for his deliverance,
thus:

Westmorland. **J**OH N Moore, esquire, and Richard Burn, clerk, two of the justices of ——— and one of us of the Quorum, To the keeper of his majesty's gaol at ——— in the said county, greeting. Forasmuch as A. O. ——— labourer, hath before us found sufficient sureties to appear before the justices of gaol delivery at the next general gaol delivery to be holden in the said county, to answer to such things as shall be then on the behalf of our said sovereign lord objected against him, and namely, to the felonious taking of ——— (for the suspicion whereof he was taken, and committed to your said gaol); We command you on the behalf of our said sovereign lord, that if the said A. O. do remain in your
said

said gaol for the said cause, and for none other, then you forbear to detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon the pain that will thereon ensue. Given under our seals at Orton in the said county, the ——— day of ——— in the ——— year ———.

Lord Hale says, the advantage of this latter kind of bail is this, that it is not only a recognizance in a sum certain, but also a real bail, and they are his keepers, and may be punished by fine beyond the sum mentioned in the recognizance, if there be cause; and may reseize him if they doubt his escape, and have him committed, and so be discharged of the recognizance.

Bailiff. See Sheriff.

Baker. See Bread.

Banks destroying.

1. **E**VERY perverse and malicious cutting down and breaking up of any part of the dike called new *Powdike* in *Marshland* in the county of *Norfolk*, and the broken dike called *Old-field dike* by *Marshland* in the isle of *Ely*, or of any other bank being parcel of the rind and uppermost part of the said country of *Marshland*, made for the defence and salvation of the said country of *Marshland*, shall be adjudged felony. And the sessions may determine the same. 22 H. 8. c. 11.

2. By a clause in the statute of 6 G. 2. c. 37. s. 5. which Sea and river clause by a subsequent act of 10 G. 2. c. 32. s. 4. is incorporated banks. with the act, commonly called the *Black act* (9 G. c. 22.) and which has continuance to Sep. 1. 1757, &c. If any person (during the continuance of the said act) shall unlawfully and maliciously break down or cut down the bank of any river, or any sea bank, whereby any lands shall be overflowed or damaged; he shall be guilty of felony without benefit of clergy.

And the hundred shall make satisfaction for the damages, not exceeding 200 l. as may be seen more at large under the title *Black act*.

3. And moreover, by the statute of 10 G. 2. c. 32. s. 5. If Piles for securing any person shall unlawfully cut off, draw up, or remove and carry banks. away any piles, chalk, or other materials, driven into the ground, and used for the securing any marsh or sea walls, or banks, in order to prevent the lands lying within the same from being overflowed and damaged; on complaint or information thereof made upon oath to any justice residing near the place, such justice shall summon the party complained of, or shall issue his warrant to apprehend and bring such person before him; and upon his appearance, or neglect to appear, he shall proceed to examine the fact, and upon due proof thereof made either by confession, or

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oath of one witness, shall convict the offender; who shall thereupon forfeit 20*l.* half to the informer, and half to the overseer for the use of the poor, to be levied by distress and sale: For want of sufficient distress, to be committed to the house of correction, to be kept to hard labour for six months.

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Derivation.

1. **B**ANQUE in french signifies the same as *mensa* in latin; and *route* is a sign or mark, as we say a cart route is the sign or mark where the cart hath gone: metaphorically it is taken for him that hath wasted his estate, and removed his banque, so as there is left but a mention thereof. 4 Inst. 277.

Description of a bankrupt.

2. The description of a bankrupt, within the several statutes brought together into one view, seemeth to be as follows: *Every person using the trade of merchandize, by way of bargaining, exchange, bartry, chevifance, or otherwise, in gross, or by retail, or seeking his trade of living by buying and selling, or that shall use the trade or profession of a scrivener receiving other mens monies or estates into his trust or custody, who shall (1) depart the realm; or (2) begin to keep his house, or otherwise to absent himself; or (3) take sanctuary; or (4) suffer himself willingly to be arrested for any debt or other thing not grown or due for money delivered, wares sold, or any other just or lawful cause or good consideration or purposes; or (5) shall suffer himself to be outlawed; or (6) yield himself to prison; or (7) willingly or fraudulently shall procure himself to be arrested, or his goods to be attached or sequestred; or (8) depart from his dwelling house; or (9) make any fraudulent grant or conveyance of his lands or goods, to the intent or whereby his creditors shall and may be defeated or delayed for the recovery of their just debts; or (10) shall obtain any protection, other than such person as shall be lawfully protected by privilege of parliament; or (11) shall prefer to any court any petition or bill against any of his creditors, thereby endeavouring to inforce them to accept less than their just debts, or to procure time, or longer days of payment than was given at the time of their original contracts; or (12) being arrested for debt, shall lie in prison two months; or (13) being arrested for 100*l.* or more, shall escape out of prison,—shall be adjudged a bankrupt; (and in the said cases of arrest, or lying in prison, from the time of his first arrest.)* 1 J. c. 15. f. 2. 21 J. c. 19. f. 2, 15. 10 An. c. 15. f. 1.

Using the trade of merchandize] But no person who shall adventure any money in the East-India company, and shall receive his dividend in merchandize, and shall sell or exchange the same, shall be judged thereby a merchant or trader within any statute for bankrupts. 13 & 14 C. 2. c. 24. f. 3, 4.

Seeking his trade of living by buying and selling] He that buys only, or sells only, is not within this description. *Read, Bankr.*

Also

Also no farmer, grazier, or drover of cattle, shall be deemed a bankrupt. 5 G. 2. c. 30. f. 40.

Also an innkeeper is said not to be a trader within these statutes. 1 Salk. 110.

It is likewise held, that a taylor is not within the statutes of bankruptcy, because he gets not his living by buying and selling; but shoemakers, weavers, dyers, tanners, and bakers have been held to be within the said statutes. *Read. Bankr.*

Receiving other mens monies or estates into his trust or custody]
Bankers, brokers, and factors are within this description. 5 G. 2. c. 30. f. 39.

But no receiver general of any taxes granted by act of parliament, shall be deemed a bankrupt. 5 G. 2. c. 30. f. 40.

3. But notwithstanding that a person may have committed any of the abovesaid acts of bankruptcy, yet nevertheless *no commission of bankrupt shall be issued, on the petition of one or more creditors, unless the single debt of such creditor, or of two or more being partners, amount to 100 l. or of two such creditors petitioning amount to 150 l. or of three or more to 200 l.* For what debts a commission shall be issued, and what is to be done previous thereto.

And the creditor or creditors petitioning, shall before the commission shall be granted, make affidavit before a master in chancery (to be filed with the proper officer) of the truth of the debt, and shall also give 200 l. bond to the lord chancellor for proving the debt as well before the commissioners, as upon a trial at law, if the due issuing of the commission shall be contested, and also for proving the party a bankrupt, and further to proceed on such commission as hereafter is mentioned: and if it shall appear, that the commission was taken out fraudulently, the lord chancellor may order satisfaction, and may assign such bond to the party injured. 5 G. 2. c. 30. f. 23.

4. But these circumstances abovementioned being observed, then the lord chancellor may on such complaint in writing as aforesaid, by commission under the great seal, appoint such wise and honest discreet persons as to him shall seem good, to be commissioners. 13 El. c. 7. f. 2.

5. Which commissioners, before they act, shall administer to each other the following oath; "I A. B. do swear, that I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the several powers and trusts reposed in me as a commissioner in a commission of bankrupt against ——— and that without favour or affection, prejudice or malice. So help me God." 5 G. 2. c. 30. f. 43.

And they shall keep a memorial thereof, signed by them, amongst the proceedings. *Id.* f. 44.

6. Then the commissioners shall cause notice of the commission being issued to be given in the *Gazette*, and likewise notice in writing to be left at the bankrupt's usual place of abode, or personal notice to be given if he is in prison; in which notice also shall be appointed a time and place of meeting of the commissioners, which meeting shall be at three several times within forty-two days, the last of which shall be on the forty-second day; Notice in the gazette of the commission being issued.

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within which time the bankrupt shall surrender, and discover his estate and effects. 5 G. 2. c. 30. s. 1.

But the lord chancellor may enlarge the time for such surrender and discovery, not exceeding fifty days from the end of the said forty-two days; so as such order be made by him, six days before the expiration of the forty-two. *Id.* s. 3.

Chusing assignees.

7. The first meeting shall be for chusing an assignee or assignees of the bankrupt's estate and effects (which in *London* shall be at *Guildhall*). 5 G. 2. c. 30. s. 26.

The money with whom to be lodged.

8. But before assignees are chosen, the major part in value of the creditors may direct how and with whom the money to be received shall remain till divided; to which the assignees shall conform, as often as 100*l.* shall be got in. 5 G. 2. c. 30. s. 32.

Expences of the commission.

9. And the creditor or creditors who shall sue out the commission, shall prosecute the same at their own expence till assignees be chosen; and the commissioners shall at the meeting for chusing assignees, ascertain such costs, and by writing under their hands order the assignees to reimburse the same, out of the first effects that shall be got in. 5 G. 2. c. 30. s. 25.

Who shall vote for assignees.

10. At the said meeting for chusing assignees, the commissioners shall admit the proof of any creditor's debt, that lives remote from the place of meeting, by affidavit; and also permit any person duly authorized by letter of attorney from such creditors (oath being first made of the due execution thereof, either by affidavit sworn before a master in chancery, or before the commissioners *viva voce*; and in case of creditors residing in foreign parts, such affidavits to be made before a magistrate where the party shall be residing, and together with such creditors letters of attorney, to be attested by a notary publick) to vote in the choice of an assignee or assignees in the place of such creditor: And the commissioners shall assign the estate and effects unto such person or persons, as the major part in value of the creditors, according to the debts then proved, shall choose. 5 G. 2. c. 30. s. 26.

But no creditor shall so vote, whose debt shall not amount to 10*l.* *Id.* s. 27.

Chusing new assignees.

11. And the commissioners may from time to time appoint new assignees, if the major part of the creditors, whose debts amount to 10*l.* shall think fit; and the former assignees shall assign to them in ten days after notice of such choice, and of the new assignees acceptance thereof, signified under their hands; on pain of 200*l.* to the creditors, with full costs. 5 G. 2. c. 30. s. 30.

And the lord chancellor, on petition of any creditors, may order former assignments to be vacated, and new assignments to be made, of the effects not received; and the commissioners shall cause notice thereof to be given in the two next gazettes, and that the debtors do not pay to the assignees removed. *Id.* s. 31.

Bankrupt to be apprehended.

12. On certificate under the hands and seals of the commissioners, that such commission is issued, and such person proved before them to become bankrupt, any judge or justice of the peace, shall on application to them for that purpose made, grant their warrant (A) for the taking and apprehending such person, and commit (B) him to the common gaol, there to remain until he

he be removed by order of the commissioners by their warrant. And the gaoler shall forthwith give notice to one or more of the commissioners, of such person being in his custody; whereupon they shall send their warrant to him to deliver him to the person who shall be named in the warrant, who shall convey him to the commissioners to be examined. And the commissioners by such or any other their warrant, may seize the goods and papers of such bankrupt which shall be in any prison (necessary wearing apparel of himself, and wife, and children excepted). 5 G. 2. c. 30. s. 14.

But if the person so apprehended shall, within the time allowed, submit to be examined, and in all things conform, he shall have the same benefit as if he had surrendered. 5 G. 2. c. 30. s. 15.

13. The bankrupt after assignees shall be appointed, shall deliver up to them on oath (to be administered by a master in chancery, or justice of the peace) all his books of account, papers, and writings not seized by the messenger of the commission, and not before delivered up, and then in his power, and discover such as are in the power of others; and, being not in custody, shall at all times attend the assignees, on reasonable notice given to him in writing, or left for him at his place of abode, in order to assist in making out the account of his estate 5 G. 2. c. 30. s. 4. Bankrupt to deliver up.

14. And such bankrupt having surrendered, shall at all seasonable times, before expiration of the forty-two days, or further term, be at liberty to inspect his papers, in presence of the assignees, or some person appointed by them, and to bring with him for his assistance any persons not exceeding two at a time, and to make extracts from thence, the better to enable him to discover his effects. 5 G. 2. c. 30. s. 5. Bankrupt to be at liberty to inspect his papers.

And in order thereto, he shall be free from arrest or imprisonment of his creditors, in coming to surrender, and from his surrender, for the said forty-two days or further term; provided he was not in custody at the time of surrender. And if he be arrested for debt, or on an escape warrant, coming to surrender, or after surrender within the said term; then, on producing the notice under the hands of the commissioners or assignees, to the officer who shall arrest him, and making it appear to such officer that such notice is signed by them, and giving the officer a copy thereof, he shall be immediately discharged: And if any officer shall in such case detain him, he shall forfeit to him for his own use 5 l. a day, by action of debt, with full costs. *Id.* Shall be freed from arrest,

15. And if the bankrupt be in prison or custody at the time of issuing the commission, and is willing to surrender and be examined, and can be brought before the commissioners and creditors, the expence thereof shall be paid out of his estate: But if he is in execution, or cannot be brought before the commissioners, then they shall attend him in prison; and the assignees may appoint a person to attend him in prison, and to produce to him his books and papers, in order to prepare his last discovery and examination; a copy whereof the assignees shall apply for, and the bankrupt shall deliver to them, ten days before such last examination. 5 G. 2. c. 30. s. 6. Bankrupt in prison when the commission is issued.

Bankrupt to be examined.

16. And the commissioners may examine him (on oath, 21 *J. c. 19. f. 9.*) as well by word of mouth, as on interrogatories in writing, touching his trade, dealings, estate, and effects; and take down in writing his answer to verbal examinations; which he shall sign: And if he shall refuse to answer, or not answer fully all lawful questions, or refuse to sign the same; the commissioners may by warrant commit him to prison without bail, *till he shall submit to them, and full answer make*, and sign the same; which warrant shall specify such questions. 5 *G. 2. c. 30. f. 16, 17.*

Till he shall submit to them, and full answer make] A commitment *until he should conform himself to their authority*, was adjudged ill, because too general; since they have authority in other matters besides that: and it is best in the like cases, strictly to pursue the statute. Lord *Raym.* 100.

Another commitment *till discharged by due course of law*, adjudged ill for the same reason. *Id.* 851.

And if on an *habeas corpus* there appear insufficiency in the warrant of commitment, the judge shall commit him to the same prison, to remain as aforesaid, unless it be made appear that he hath fully answered all lawful questions, or unless it appear that he had sufficient reason for not signing. 5 *G. 2. c. 30. f. 18.*

And if the gaoler shall suffer him to escape, or to go without the walls or doors of the prison; he shall, on conviction by indictment or information, forfeit 500*l.* to the creditors. *Id.*

Also the gaoler shall, on request of any creditor who shall have proved his debt, and producing a certificate thereof under the hands of the commissioners, produce and shew him to such creditor; on pain of 100*l.* to the creditors, by action of debt. *Id. f. 19.*

Bankrupt not surrendring and conforming, felony.

17. And by the said statute it is enacted, that if he shall not within the said time surrender himself to the commissioners, and sign such surrender, and also submit to be examined from time to time on oath, and in all things conform to the statutes concerning bankrupts, and also on his examination fully discover all his estate, and how disposed of, except what hath been *bona fide* disposed of in the way of his trade and dealings, and except what hath been laid out in the ordinary expence of his family, and also deliver up to them all his effects (except the necessary wearing apparel of himself, and wife, and children); then in case of any default and wilful omission in not surrendring and submitting to be examined, or in case he shall remove, conceal, or embezzle any part of his estate to the value of 20*l.* or any books of account, or writings relating thereto, with intent to defraud his creditors, and being thereof convicted by indictment or information, he shall be guilty of felony without benefit of clergy, and his estate shall be divided amongst his creditors. 5 *G. 2. c. 30. f. 1.*

And by the 20 *G. 2. c. 52.* All offences by bankrupts made felony by the several acts concerning bankruptcy, are excepted out of the general pardon.

Other persons concealing the bankrupt's effects.

18. And every person who shall accept any trust, or conceal any estate of the bankrupt, and shall not in forty-two days after issuing

issuing the commission, and notice thereof in the gazette, discover the same in writing to one or more commissioners or assignees, and submit himself to be examined; shall forfeit to the creditors 100 l. and double value of the estate concealed, by action of debt, with full costs. 5 G. 2. c. 30. s. 21.

19. Also the commissioners may examine on oath the bankrupt's wife, like as other persons. 21 J. c. 19. s. 5, 6. Bankrupt's wife may be examined.

20. As also they may examine in like manner every other person, duly summoned before, or present at their meeting, touching the person, trade, dealings, estate, and effects of the bankrupt, and any acts of bankruptcy by him committed; and may take down in writing the answers of verbal examinations, which the party shall sign: And if any of them shall refuse to answer, or not answer fully all lawful questions, or refuse to sign the same, the commissioners may by warrant commit him to prison without bail, till he shall submit to them, and full answer make, and sign the same; in like manner as is said before in section the 16th concerning the bankrupt himself. 5 G. 2. c. 30. s. 16, 17, 18, 19. And every other person.

21. The said commissioners shall have power, by their discretions to take such order with the lands of such bankrupt, as well copy or customary hold as freehold, which he had in his own right before he became a bankrupt; or which he purchased jointly with his wife or child to the only use of such offender, or for such use or interest as he may lawfully part with; or with any person of trust to any secret use of such offender; and also with all his money, goods, chattels, wares, merchandizes, and debts; and cause all the same to be searched and appraised to the best value they may; and the same to be sold by deed indented, and inrolled in a court of record; or otherwise ordered for payment of the creditors, to every creditor a portion rate-like, according to the quantity of his debts. 13 El. c. 7. s. 2. Bankrupt's estate how to be ordered.

And if any lands or goods shall descend or come to the bankrupt afterwards, before the debts be fully paid; the same shall be disposed of in like manner. 13 El. c. 7. s. 11.

But this shall not extend to lands assured by such person before he becomes bankrupt; provided the assurance be made *bona fide*, and not to his own use only, or of his heirs; and that the party to whose use they are assured, be not privy to the fraudulent purpose of the bankrupt to deceive his creditors. 13 El. c. 7. s. 12. Lands sold bona fide.

Also the commissioners may by deed indented, and inrolled at *Westminster* in six months, sell the bankrupt's estate in tail, whereof no reversion or remainder is in the king, or of the king's gift; which sale shall be good against all persons, whom the bankrupt by common recovery, or otherwise, might cut off. 21 J. c. 19. s. 12. Estate tail.

Also if the bankrupt hath conveyed any estate, on condition, or power of redemption, at a day to come, by payment of money, or otherwise; the commissioners before the time of the performance of such condition, may appoint under their hands and seals any person to make tender or payment of money, or other performance, as fully as the bankrupt might have done; and may dispose Estate mortgaged.

Customary lands
to pay fine.

Commissioners
may break open
doors.

Bankrupt frau-
dulently convey-
ing.

Bankrupt com-
pounding with
the person suing
out the com-
mission.

Debtor paying to
a bankrupt.

Money received
of a bankrupt.

Purchaser not to
be impeached
after five years.

Bankrupts con-
veying their
goods, and keep-
ing possession.

Debt due to the
king.

dispose of the estate redeemed for the use of the creditors, as fully as any other estate of the bankrupt. 21 J. c. 19. f. 13. H. 10, 106.

Persons purchasing copyhold or customary lands shall pay fine to the lord of the manor, who shall thereupon admit them. 13 El. c. 7. f. 3.

22. Commissioners and others by warrant under their hands and seals, may break open the bankrupt's houses, doors, trunks, and chests, where he or any of his goods shall be reputed to be, and seize upon, and order his body and goods as before is said. 21 J. c. 19. f. 8.

23. If the bankrupt shall convey to any of his children, or other person, any lands or goods, or transfer his debts into other mens names, except the same be conveyed or transferred on marriage of any of his children, or for some valuable consideration; the same may be disposed of in like manner. 1 J. c. 15. f. 5.

And if the bankrupt shall on his examination be found fraudulently to have conveyed his lands, goods, or estate, to the value of 20 l. to defraud his creditors, and shall not discover the same, and (if it lie in his power) deliver the same to the commissioners; or if he cannot make it appear to the commissioners that he hath sustained some casual loss whereby he is disabled to pay what he oweth; he shall, on conviction upon indictment at the assizes or sessions, be set on the pillory in some publick place for two hours, and have one of his ears nailed to the pillory, and cut off. 21 J. c. 19. f. 7.

24. And if any bankrupt, after issuing the commission, shall compound with the person suing out the same, for more than his proportion with the rest of the creditors; such commission may be superseded, and the lord chancellor may award to any creditor petitioning another commission, and the person so compounding shall lose his whole debt, and deliver up to the new commissioners all he shall have so received, for the use of the other creditors. 5 G. 2. c. 30. f. 24.

25. If a debtor to a bankrupt pays him voluntarily, he must pay it over again; but it is otherwise, if he pays him by compulsion of law. *Read. Bankr.*

26. But no real creditor of a bankrupt shall be liable to refund to the assignees, any money which before the suing forth the commission was in course of trade received by him of the bankrupt, before he had knowledge of the person's becoming a bankrupt, or being insolvent. 19 G. 2. c. 32. f. 1.

27. And no purchaser for valuable consideration shall be impeached, unless the commission be sued out in five years after the person shall become bankrupt. 21 J. c. 19. f. 14.

28. If the bankrupt, at the time he shall become bankrupt, shall by consent of the true owner, have in his possession and disposition any goods whereof he shall be reputed owner, and take upon him the sale or disposition thereof as owner; the commissioners may dispose of the same, as fully as any other part of the bankrupt's estate. 21 J. c. 19. f. 11.

29. If any estate of the bankrupt be extended after he is become bankrupt, by any person under pretence of his being an accountant

countant or indented to the king; the commissioners may examine on oath, whether the said debt were due to such debtor or accountant, on any contract originally made between such accountant and the bankrupt; and if it was made with any other person than the said accountant, or for the use of any other person, the commissioners proceedings shall be available against the said extent.

21 *J. c. 19. f. 10.*

30. The commissioners or assignees may state accounts between the bankrupt and his debtors or creditors, and set one debt against another, and the balance only shall be paid on either side. 5 *G. 2. c. 30. f. 28.*

Commissioners may state accounts.

31. Also the assignees, with consent of the major part in value of the creditors present at a meeting pursuant to notice to be given in the gazette, may submit disputes relating to the bankrupt's estate to arbitration; and may compound for debts owing to the bankrupt. 5 *G. 2. c. 30. f. 34, 35.*

May refer to arbitration, and compound.

32. Two joint traders, one of them became a bankrupt: By *Holt Ch. J.* the commissioners cannot meddle with the interest of the other, for it is not affected by the bankruptcy of his companion. 3 *Salk. 61.*

Partner not affected.

33. Every person who shall, after the time of surrender, voluntarily make discovery to the commissioners or assignees, of any part of the bankrupt's estate, not before come to the knowledge of the assignees, shall have 5*l. per cent.* and such further reward as the assignees and the major part of the creditors in value, present at any meeting, shall think fit. 5 *G. 2. c. 30. f. 20.*

Reward for discovering.

34. Every creditor shall be at liberty to prove his debt, without paying any thing for the same. 5 *G. 2. c. 30. f. 25.*

Creditor may prove his debt gratis.

35. At the meeting for chusing assignees, the commissioners shall admit the proof of any creditor's debt, that lives remote from the place of meeting, by affidavit. 5 *G. 2. c. 30. f. 26.*

By affidavit.

36. Creditors having security by judgment, statute, recognition, specialty with penalty or without, or other security, or having no security, or having made attachments in *London* or elsewhere by any custom, of the goods of such bankrupt, whereof there is no execution or extent served and executed upon the lands, goods, or estate of such bankrupt before he shall become bankrupt, shall not be relieved for more than a rateable part with the other creditors, notwithstanding any penalty or greater sum contained in such security. 21 *J. c. 19. f. 9.*

Persons having security, to have only their share.

37. Persons taking securities payable at a future day, for goods delivered to persons who shall become bankrupts before the time of payment, shall be admitted to prove their securities, and receive their proportion, deducting interest from the time of payment to the time it would have become due. 7 *G. c. 31. f. 1, 2.*

Securities for money not become due.

38. The obligor in any bottom-ree, or *respondentia* bond, and the assured in a policy of insurance, shall be admitted to claim; and after the loss or contingency, to prove the debt thereon, in like-manner as if the same had happened before issuing the commission. 19 *G. 2. c. 32. f. 2.*

Bottom-ree. Insurance.

39. The mortgagee may chuse whether he will come in as a creditor. *Read Bankr.*

Mortgagee.

40. But

Execution.

40. But the plaintiff that hath the defendant's body in execution, shall not come in to be relieved. *Read. Bankr.*

Swearing to a false debt.

41. If any person shall swear that any sum is due to him from the bankrupt, which is not due, or more than is due; he shall suffer as in cases of perjury, and moreover forfeit double to the creditors. 5 G. 2. c. 30. s. 29.

Assignees to keep books.

42. The assignees shall keep books of account of all sums and effects received; which every creditor who hath proved his debt may inspect at all seasonable times. 5 G. 2. c. 30. s. 26.

First dividend.

43. The assignees shall, after four months, and within twelve months after issuing the commission, cause at least twenty-one days notice to be given in the gazette, of the time and place the commissioners and assignees intend to meet to make a dividend; at which time, the creditors who have not before proved their debts, may prove them: and the assignees shall produce fair accounts, and be sworn to them before the commissioners, if required by the creditors; and they shall be allowed therein all reasonable expences. And the commissioners may then order, under their hands, a distribution; which order shall contain the time and place of making it, and the total of the debts proved, and of the money in the hands of the assignees, and how much in the pound shall be then distributed; one part of which order shall be filed among the proceedings under the commission, and each of the assignees shall have a duplicate thereof. And the assignees shall take receipts for the same, in a book to be kept for that purpose. 5 G. 2. c. 30. s. 33.

Allowance to the bankrupt.

44. The bankrupt surrendering and conforming, shall be allowed 5 *l. per cent.* if after such allowance, the neat produce of his estate will pay 10 *s.* in the pound; so as the said 5 *l. per cent.* amount not to above 200 *l.* 5 G. 2. c. 30. s. 7.

And if the neat produce will pay 12 *s. 6d.* in the pound; he shall be allowed 7 *l. 10 s. per cent.* so as it amount not to above 250 *l.* *Id.*

And if it will pay 15 *s.* in the pound, he shall be allowed 10 *l. per cent.* so as it exceed not 300 *l.* and such bankrupt shall be discharged from all debts by him owing at the time he became bankrupt: And if he shall be arrested or prosecuted for any debt due before such time, he shall be discharged on common bail, and may plead in general, that the cause of action did accrue before he became bankrupt, and may give this act, and the special matter in evidence; and the certificate of his conforming (as hereafter mentioned), and allowance thereof, shall be sufficient evidence of the trading, bankruptcy, commission, and other proceedings precedent to the obtaining the certificate; and a verdict shall pass for the defendant, unless the plaintiff can prove that the certificate was obtained fraudulently, or can make appear a concealment by the bankrupt to the value of 10 *l.* And if the plaintiff is cast, the defendant shall have full costs. *Id.*

But if any commission of bankruptcy shall issue against any person who shall have been discharged by this act, or shall have compounded with his creditors, or delivered to them his estate, and been released by them, or been discharged by an act of insolvency;

vency ; then the body only of such person conforming shall be free from arrest and imprisonment, but his future estate shall remain liable to his creditors (his tools of trade, necessary household goods and furniture, and necessary wearing apparel of himself and wife and children only excepted), unless the estate of such person shall produce clear of all charges 15 s. in the pound. *Id. f. 9.*

If the neat produce will not pay 10 s. in the pound, the bankrupt shall be allowed so much as the assignees and commissioners shall think fit, not exceeding 3 l. per cent. *Id. f. 8.*

45. But no discovery on oath shall intitle the bankrupt to the said allowance, unless the commissioners shall, under their hands and seals, certify to the lord chancellor, that he hath made a full discovery of his estate, and in all things conformed himself ; and that there doth not appear to them any reason to doubt of the truth of such discovery, or that the same is not a full discovery ; and unless four parts in five in number and value of the creditors, who shall be creditors for not less than 20 l. and who have proved their debts, or some person by them authorized thereto, shall sign such certificate, and testify their consent to such allowance and certificate, and to the bankrupt's discharge, to be also certified by the commissioners ; but the commissioners shall not certify the same, till they have proof by affidavit of such creditors, or of the person by them respectively authorized, signing the said certificate, and of the power by which any person is so authorized (and the letter of attorney of a creditor residing in foreign parts, attested by a notary publick, shall be sufficient evidence in such case of such power, 24 G. 2. c. 57. f. 10.) Which said affidavit, together with such power to sign, shall be laid before the lord chancellor with the certificate in order for allowing the same ;—and unless the bankrupt make oath, that the certificate and consent of the creditors were obtained fairly and without fraud ; and unless the certificate shall, after such oath, be allowed and confirmed by the lord chancellor, or two of the judges to whom he shall refer it : and any of the creditors shall be allowed to be heard against making the certificate, and against the confirmation of it : nor shall any commissioner sign the certificate, till after four parts in five in number and value of the creditors shall have signed it. 5 G. 2. c. 30. f. 10.

Certificate and
allowance there-
of.

And every security given to the use of any creditor, to induce him to sign such allowance or certificate, shall be void. *Id. f. 11.*

Moreover, no bankrupt shall be intitled to such allowance, who hath upon marriage of any child given above 100 l. unless he prove by his books, or upon his oath, that he had remaining at the time sufficient to pay his debts ; or who hath lost in one day the value of 5 l. or in the whole the value of 100 l. in 12 months next before his becoming bankrupt, at cards, dice, tables, tennis, bowls, billiards, shovelboard, cock-fighting, horse-races, dog-matches, foot-races, or other pastime or game, or in bearing a part in the Stakes, or by betting ; or hath in 12 months before lost 100 l. by contracts for the stock of any company, or publick funds, where the contract was not to be performed within
a week,

a week, or where the stock was not actually transferred. 5 G. 2. c. 30. s. 12.

And moreover, by 24 G. 2. c. 57. When any person shall fraudulently swear, before the major part of the commissioners, or by affidavit exhibited to them, that a sum of money is due to him from the bankrupt, which shall in fact not be really owing; and shall, in respect of such fictitious debt, sign the certificate for such bankrupt's discharge; in such case, unless the bankrupt shall, before the major part of the commissioners have signed the certificate, by writing signed by him and delivered to one or more of the commissioners or assignees, disclose the fraud, and object to the reality of such debt, the certificate shall be void, and the bankrupt shall not be intitled to his discharge or allowance. S. 9.

Bankrupt's duty after allowance.

46. The bankrupt, after allowance of the certificate, shall attend on notice in writing from the assignees, to settle accounts, and shall have 2 s. 6 d. a day allowed for attendance; and if he shall neglect or refuse, he shall, on oath made by the assignees before the commissioners, be apprehended and committed to close gaol, by warrant of the said commissioners, till he conform. 5 G. 2. c. 30. s. 36.

Commissioners pay.

47. To prevent expences, no money shall be paid out of the effects for eating or drinking of the commissioners, or of any other person; nor shall the commissioners have above 20 s. each for each meeting; nor any schedule be annexed to the deed of assignment: Commissioners acting contrary hereto, shall be disabled for ever to act as such. 5 G. 2. c. 30. s. 42.

Half fees on renewing the commission.

48. If by the death of commissioners, or otherwise, it be necessary to renew the commission, half fees only shall be paid. 5 G. 2. c. 30. s. 45.

Attorney's bill.

49. All bills of fees or disbursements demanded by any solicitor, clerk, or attorney, shall be settled and certified by a master in chancery, who shall have for the same 20 s. 5 G. 2. c. 30. s. 46.

Bankrupt dying.

50. Bankrupt dying before distribution, shall not hinder the distribution. 1 J. c. 15. s. 17.

Second dividend.

51. In 18 months after issuing the commission, the assignees shall make a second dividend, and shall cause notice to be inserted in the gazette of the time and place the commissioners intend to meet to make a second distribution, and for the creditors who have not proved their debts to come and prove them: And at such meeting, the assignees shall produce their account on oath, and what is in their hands shall by order of the commissioners be forthwith divided. Which second dividend shall be final, unless a suit in law or equity be depending, or part of the estate standing out that cannot have been disposed of, or that the major part of the creditors shall not have agreed to be sold, or unless some other or future estate of the bankrupt shall come to the assignees; which they shall, as soon as may be, convert into money, and in two months distribute the same in like manner. 5 G. 2. c. 30. s. 37.

But no suit in equity shall be commenced by the assignees, without consent of the major part in value of the creditors, who shall be present at a meeting of the creditors pursuant to notice in the gazette. *Id.* s. 38.

Bankrupt.

III

52. If the bankrupt shall be taken in execution, or detained in prison, for debt owing before his bankruptcy, by reason that judgment was obtained before the certificate was allowed and confirmed; any judge of the court, on producing the certificate, may order him to be discharged without fee. 5 G. 2. c. 30. f. 13. Bankrupt's discharge.

53. But by the discharge of a bankrupt from the debts owing by him at the time he became a bankrupt, his partner shall not be discharged, but shall be liable as if the bankruptcy had not been. Partner not discharged.

10 An. c. 15. f. 3.

54. The commissioners shall, on lawful request of the bankrupt, declare how they have bestowed his lands and goods, and pay to him the overplus, if any there be. 13 El. c. 7. f. 4. Commissioners to account, and pay the overplus.

55. On petition to the lord chancellor, he may order the proceedings to be entred of record, to be at any time searched and produced as evidence. 5 G. 2. c. 30. f. 41. Proceedings to be entred of record.

56. Commissioner sued for any thing done on the statutes of 13 El. and 1 J. may plead the general issue; and if he recovers, shall have his costs. 1 J. c. 15. f. 16. But there is no provision for any thing done by them, or by the assignees, on any of the subsequent statutes. Remedy on commissioner being sued.

57. The commission shall not abate by the death of the king. 5 G. 2. c. 30. f. 45. King's death not to abate the commission.

Note; The act of 5 G. 2. c. 30. so often mentioned above, is but temporary, and by the last continuance is of force till Sep. 1. 1757, &c.

A. Warrant to apprehend a bankrupt.

Westmorland. } To ———

WHEREAS a certificate under the hands and seals of ——— bath this day been produced before me ——— sitting forth that a commission of bankruptcy is issued against ——— and that the said ——— is proved before them the said ——— being the major part of the commissioners authorized in the said commission, to be a bankrupt; and whereas application bath been made to me by ——— by order of the said commissioners, for the apprehending the said ——— These are therefore to require you, on sight hereof, to take and apprehend the said ——— and bring him before me or some other of his majesty's justices of the peace for the said county, to be proceeded against according to law. Given under my hand seal this ——— day of &c.

B. Commitment thereupon.

Westmorland. } To the keeper of the common gaol at ———

I Send to you herewith ——— being duly certified to be a bankrupt, requiring you to keep him in the said gaol until he shall be discharged according to law. Given ———.

Bargain and Sale. See Inrollment.

Barratry.

Barratry.

I. What it is.

II. How punished.

I. What it is.

A Barrator (from *barret*, a wrangling suit or quarrel) is a common mover, exciter, or maintainer of suits or quarrels, either in courts, or in the country. 1 *Inst.* 368. 1 *Haw.* 243.

A common mover] It seems clear, that no one can be a barrator in respect of one act only; for every indictment for such crime must charge the defendant with being a common barrator. 1 *Haw.* 243, 4.

Mover, exciter, or maintainer] Yet it seemeth, that an attorney is in no danger of being judged guilty of an act of barratry, in respect of his maintaining another in a groundless action, to the commencing whereof he was no way privy. 1 *Haw.* 243.

Also, it hath been holden, that a man shall not be adjudged a barrator, in respect of any number of false actions brought by him in his own right: for in such cases he is liable to costs. 1 *Haw.* 243.

In courts] Either courts of record; or not of record, as in the county, hundred, or other inferior courts. 1 *Inst.* 368.

Or in the country] In three manners: 1. In disturbance of the peace. 2. In taking or keeping of possessions of lands in controversy, not only by force, but also by subtilty and deceit, and most commonly in suppression of truth and right. 3. By false inventions, and sowing of calumniations, rumors, and reports, whereby discord and disquiet may grow between neighbours. 1 *Inst.* 368.

II. How punished.

By the statute of 34 *Ed.* 3. c. 1. *The justices of the peace shall have power to restrain all barrators, and to pursue, arrest, take, and chastise them, according to their trespasss or offence.*

And altho' this statute doth not create the offence, but supposes it at common law, and only appoints the punishment, yet an indictment of barratry, concluding *against the form of the statute*, is holden to be good, and agreeable to many precedents. *Cro. Eliz.* 148. 1 *Haw.* 244.

But it hath been resolved, that such indictment is not good, without also concluding *against the peace*; for this is an essential part of it, as being an offence by the common law. 1 *Haw.* 244.

And it hath been holden, that an indictment of this kind may be good, without alledging the offence at any certain place; because

cause from the nature of the thing, consisting of the repetition of several acts, it must be intended to have happened in several places; for which cause it is said, that a trial ought to be by a jury from the body of the county. 1 *Haw.* 244.

Which case, and that of a common scold, seem to be the only offences for which a general indictment will lie, without shewing any of the particular facts in the indictment; for barratry is an offence of a complicated nature, consisting in the repetition of divers acts in disturbance of the peace, and it would be too prolix to enumerate them in the indictment; and therefore experience hath settled it to be sufficient to charge a man generally as a common barrator, and before the time to give the defendant a note of the particular matters which are intended to be proved against him; for otherwise it will be impossible to prepare a defence against so general and uncertain a charge, which may be proved by such a multiplicity of different instances; and therefore the court generally will not suffer the prosecution to go on in the trial of the indictment, without such note being given to the defendant. 1 *Haw.* 244. 2 *Haw.* 226, 7.

As to the kind and manner of punishment, it is said, that if the offender be a common person, he shall be fined and imprisoned, and bound to his good behaviour; and if he be of any profession relating to the law, that he ought also to be farther punished, by being disabled to practice for the future. 1 *Haw.* 244.

Warrant for a barrator.

Westmorland. } To the constable of ———

WHEREAS complaint upon oath hath been made unto me ——— one of his majesty's justices of the peace in and for the said county, that A. O. of ——— in the said county, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— and on divers other days and times as well before as afterwards, at ——— aforesaid in the county aforesaid, and at divers other places within the county aforesaid, was and yet is a common barrator, and daily disturber of the peace of our sovereign lord the king, and also a common brawler, wrangler, fighter, scandalizer, and sower of seditions, suits, and discords between his neighbours, and other the liege people and subjects of our said sovereign lord the king, to the great damage and disturbance of the said liege people and subjects of our said lord the king, and against the peace of our said lord the king, and to the evil example of all others in the like case offending: These are therefore to command you forthwith to bring the said A. O. before me to answer unto the said complaint, and to find sureties for his personal appearance at the next general quarter sessions of the peace to be holden for the said county, then and there to answer unto an indictment on the behalf of our said sovereign lord the king to be preferred against him for the said offences. Hereof fail not upon the peril that shall ensue thereon. Given under my hand and seal the ——— day of ———.

Bastards.

Concerning the settlement of bastard children.

See title *1000*.

- I. Who shall be deemed a bastard.*
- II. Securing the reputed father till the filiation shall be made.*
- III. Order of filiation, and appealing therefrom.*
- IV. Punishment of the mother and reputed father.*
- V. Mother or reputed father running away.*
- VI. Murdering a bastard child.*
- VII. Capacity of a bastard child as to inheritance.*

I. Who shall be deemed a bastard.

Bastard born in
lawful marriage.

I. **W**E term all by the name of bastards that are born out of lawful marriage. By the common law, if the husband be within the four seas, that is, within the jurisdiction of the king of *England*, if the wife hath issue, no proof is to be admitted to prove the child a bastard, unless the husband hath an apparent impossibility of procreation, as if the husband be but eight years old, or under the age of procreation, such issue is bastard, albeit he be born within marriage. But if the issue be born within a month, or a day, after marriage, between parties of full lawful age, the child is legitimate. *1 Inst. 244.*

And it is said, that formerly if the husband was within the four seas, no proof of *non-access* to his wife was admitted, but the child was deemed to be his: But as this notion was built on no rational foundation, it is now intirely departed from; and tho' the husband and wife are both in *England*, if there is sufficient proof that he had no access to her, the child will be a bastard. *Pendril and Pendril, M. 5 G. 2. Nelf. Bast.*

And, *M. 10 W. K. and Abberton*. The case was, a feme covert, during the absence of her husband at *Cadix*, was brought to bed of a bastard; and her husband was not in *England* from the time of her conception, till she was brought to bed. The question was, whether this child was a bastard, especially within the words of the statute of the 18 *Eliz.* (hereafter following); which saith, *children begotten and born out of lawful matrimony*; which cannot be said of this case, the mother being married at the time of the birth of the child; and if such a mother should kill such a child, she could not be guilty of murder within the statute of 21 *J. c. 27*. But by the court; he is a bastard who is begotten and born of a feme covert, whilst the husband is beyond the four seas. And in a real action, if general bastardy was pleaded, the

bishop

bishop ought to certify such a one a bastard. And where a man is bastard, he is such to all purposes, and why not within the 18 *El.* For tho' the statute of 21 *J.* is a penal law, yet the act of 18 *El.* is a remedial law. *L. Raym.* 395, 596.

2. But this non-access of the husband ought to be proved otherwise than upon the wife's oath; as in the following case: *M. 8 G. 2. K. and Reading.* The defendant *Reading* was adjudged by an order of bastardy, to be the putative father of a bastard child, begotten of the wife of one *Almont* of *Sherborn*. The said woman, on the appeal, gave evidence, that the said *Reading* had carnal knowledge of her body in or about *August* 1732, and several times since; and that her husband had no access to her from *May* 1731, to the time of her examination in that court, being the 3d of *Oct.* 1733. and that the said *Reading* was the father of the said child. And the question on removal of the same into the king's bench was, whether the wife in this case could be admitted as an evidence for or against her husband, and to bastardize her own child. And the whole court were of opinion, that the wife could be a witness to no other fact but that of incontinence, and that this she must be admitted to be a witness to from the necessity of the thing; but not to the absence of her husband, which might properly be proved by other witnesses; and likened it to the case of hue and cry, where the person robbed shall be admitted a witness of the fact of robbery, but not to prove any other matter relating thereto, as in what hundred the place was, and the like, because that may be proved by others. *Sess. C. V. 2.* 175.

How far the wife's oath shall be admitted in such case.

3. *M. 5 An. St. George's and St. Margaret's Westminster.* Child born during a divorce *mensa & thoro*, the children she has during the separation are bastards; for a due obedience to the sentence shall be intended, unless the contrary be shewed: but if a husband and wife, without sentence, do part and live separate, the children shall be taken to be legitimate, and so deemed till the contrary be proved, for access shall be intended. But if a special verdict find the man had no access, it is a bastard; and so was the opinion of Lord *Hale*, in the case of *Dickens* and *Collins*, 1 *Salk.* 123.

4. The law hath appointed no exact certain time, for the birth of legitimate issue, by the widow after the death of her husband. 1 *Darb.* 726. 2 *Lill. Abr.* 236.

Widow having a child after her husband's death.

M. 7 J. Alsop and Bowtrell. The question was, whether, the woman being delivered of a child forty weeks and nine days after the death of her husband, such child should be deemed a bastard. And it was proved, that her deceased husband's father did much abuse her, and caused her to lie in the streets; and three physicians (two of them being doctors of physick) made oath, that the child came in time convenient to be the child of the party who died; and that the usual time for a woman to go with child, is nine months and ten days, to wit, solar months, at thirty days to the month, and not lunar months; and that by reason of the want of strength in the woman or the child, or by reason of ill usage, she might be a longer time, viz. to the end of ten months or more.

And the physicians further affirmed, that a perfect birth may be at seven months, according to the strength of the mother or child, which is as long before the time of the proper birth. And by the same reason it may be as long deferred by accident, which is commonly occasioned by infirmities of the body, or passions of the mind. And the child was adjudged to be legitimate. *Cro. Ja. 541.*

II. Securing the reputed father till the filiation shall be made.

By the 6 G. 2. c. 31. If any single woman shall be delivered of a bastard child, which shall be chargeable, or likely to become chargeable, to any parish or extraparochial place; or shall declare her self to be with child, and that such child is likely to be born a bastard, and to be chargeable to any parish or extraparochial place, and shall in either of such cases, in an examination (A) to be taken in writing, upon oath, before one justice of the county, city, or town corporate, where such parish or place shall lie, charge any person with having gotten her with child, it shall be lawful for such justice, upon application made to him by the overseers of the poor of such parish, or one of them, or by any substantial householder of such extraparochial place, to issue out his warrant (B) for the immediate apprehending such person so charged as aforesaid, and for bringing him before such justice, or before any other of his majesty's justices of the peace of such county, city, or town corporate: And the justice before whom such person shall be brought, shall commit (C) him to the common gaol or house of correction, unless he shall give security (D) to indemnify such parish or place, or shall enter into a recognizance (E) with sufficient surety, upon condition to appear at the next general quarter sessions, or general sessions, of the peace, to be holden for such county or liberty, and to abide and perform such order or orders as shall be made, in pursuance of an act passed in the 18th year of the reign of her late majesty queen Elizabeth, concerning bastards begotten and born out of lawful matrimony. S. 1.

Note; Here is no power to bind the man but to the next sessions, which often happeneth before the child is born: What shall be done with him at such sessions is not very clear; for he is only bound to abide such order as shall then and there be made by the 18 *El.* which supposeth the child to be then born. Perhaps the sessions, upon application of the overseers, may bind him again till the next sessions, especially if the mother shall come to make oath before them; but if the mother be lying in, and cannot come, it is to be considered, whether her examination taken before the first justice, being proved before them, shall be a sufficient ground for them to proceed upon; or whether the first justice, upon the application and examination already made before him, may bind him again to the next sessions. At least, it seemeth, that the justice cannot bind him generally at the first, unto the ses-

sions which shall happen next after the child shall be born ; for that such binding is not warranted by the statute.

And if such woman shall die, or be married, before she shall be delivered, or miscarry of such child, or shall appear not to have been with child at the time of her examination, such person shall be discharged from his recognizance at the next sessions, or immediately released out of custody by warrant of one justice residing in or near the limits where such parish or place shall lie. S. 2.

And on application made by any such person, who shall be committed to any gaol or house of correction, or by any person on his behalf, to any justice residing in or near the limits where such parish or place shall lie ; such justice shall summon the overseers of such parish, or one or more substantial householders of such extraparochial place, to appear before him at a time and place to be mentioned in such summons, to shew cause why such person should not be discharged : And if no order shall appear to have been made, in pursuance of the 18th of Eliz. within six weeks after such woman shall have been delivered, such justice may discharge him from his imprisonment. S. 3.

But it shall not be lawful for any justice, to send for any woman, before she shall be delivered, and one month after, in order to her being examined concerning her pregnancy ; or to compel any woman, before she shall be delivered, to answer any questions relating to her pregnancy. S. 4.

If the constable, having a warrant to apprehend the reputed father, shall willingly or negligently suffer him to escape ; he may be bound over to the sessions, and there indicted, fined, and imprisoned : and under the influence thereof be compelled to make satisfaction to the prosecutors.

III. Order of filiation, and appealing therefrom.

In treating hereof, I will first set forth the statutes, whereon the order is to be framed ; then will insert the approved form of an order of bastardy, together with the adjudged cases upon the several parts thereof ; and last of all, will consider certain other resolutions upon the said statutes, not relating to the form of such order.

The statutes are these :

By the 18 El. c. 3. it is enacted as follows ; *Concerning bastards begotten and born out of lawful matrimony, the said bastards being now left to be kept at the charges of the parish where they be born, to the great burden of the same parish, and to the evil example and encouragement of lewd life, it is enacted, that two justices (1 Q.) in or next unto the limits where the parish church is, within which parish such bastard shall be born, upon examination of the cause and circumstance (F), shall and may by their discretion, take order (G) as well for the punishment of the mother and reputed father, as also for the better relief of such parish, in part or in all ; and shall and may, by like discretion, take order for the keeping of every such bastard child, by charging such mother or reputed father, with the payment of money weekly, or other sustentation for the relief of such child, in such wise as they shall think meet and convenient : And if*

after the same order by them subscribed under their hands, the mother or reputed father, upon notice thereof, shall not for their part observe and perform the said order, that then every such party so making default in not performing the said order, to be committed to ward to the common gaol, there to remain without bail or mainprise, except he or she shall put in sufficient surety (H) to perform the said order, or else personally to appear at the next general sessions of the peace, to be holden in that county where such order shall be taken; and also to abide such order, as the said justices, or the more part of them, then and there shall take in that behalf (if they then and there shall take any); and that if at the said sessions, the said justices shall take no other order, then to abide and perform the order before made, as is abovesaid.

And by 3 Car. c. 4. All justices of the peace within their several limits and precincts, and in their several sessions, may do and execute all things concerning the statute of 18 El. that by the justices in their several counties are by the said statute limited to be done. S. 15.

Upon which statutes, the form of an order of bastardy may be to this effect:

Westmorland. **T**HE order of J. P. and K. P. esquires, two of his majesty's justices of the peace in and for the said county, one whereof is of the Quorum, and both residing [in, or] next unto the limits of the parish church within the parish of — in said county, made the — day of — in the — year — concerning a male bastard child, lately born in the parish of — aforesaid, of the body of A. M. single woman:

Whereas it hath appeared unto us the said justices, as well upon the complaint of the churchwardens and overseers of the poor of the said parish of — as upon the oath of the said A. M. that she the said A. M. on the — day of — now last past, was delivered of a male bastard child at — in the said parish of — in the said county, and that the said bastard child is now chargeable to the said parish of — and likely so to continue; and further, that A. F. of — in the said county, yeoman, did beget the said bastard child on the body of her the said A. M. And whereas the said A. F. hath appeared before us, in pursuance of our summons for that purpose, but hath not shewed any sufficient cause why he the said A. F. shall not be the reputed father of the said bastard child: [Or, And whereas it hath been duly proved to us upon oath, that the said A. F. hath been duly summoned to appear before us the said justices, to the end we might examine into the cause and circumstance of the premisses; and whereas he the said A. F. hath neglected to appear before us, according to such summons:] We therefore upon examination of the cause and circumstance of the premisses, as well upon the oath of the said A. M. as otherwise, do hereby adjudge him the said A. F. to be the reputed father of the said bastard child.

And

And thereupon we do order, as well for the better relief of the said parish of ——— as for the sustentation and relief of the said bastard child, that the said A. F. shall and do forthwith, upon notice of this our order, pay or cause to be paid to the said churchwardens and overseers of the poor of the said parish of ——— or to some or one of them, the sum of ——— for and towards the lying-in of the said A. M. and the maintenance of the said bastard child, to the time of making this our order.

And we do also hereby further order, that the said A. F. shall likewise pay or cause to be paid, to the churchwardens and overseers of the poor of the said parish of ——— for the time being, or to some or one of them, the sum of ——— weekly and every week from this present time, for and towards the keeping, sustentation, and maintenance of the said bastard child, for and during so long time, as the said bastard child shall be chargeable to the said parish of ———.

And we do further order, that the said A. M. shall also pay or cause to be paid to the said churchwardens and overseers of the poor of the said parish of ——— for the time being, or to some or one of them, the sum of ——— weekly and every week, so long as the said bastard child shall be chargeable to the said parish of ——— in case she shall not nurse and take care of the said child her self.

Given under our hands and seals the day and year first above written.

One whereof is of the Quorum] Many orders formerly have been quashed, for want of setting forth that one of the justices was of the *Quorum*; but now by the statute of 26 G. 2. c. 27. no order shall be quashed for that defect only.

Born in the parish of ———] M. 11 An. 2. and Casb. The order did not set forth that the child was born in the parish; and by the statute the justices cannot make an order to compel a man to contribute towards the maintenance of a bastard child, but in case of that parish where the child was born: And quashed for this reason. *Cas. of S* 59.

And, E. 3 G. 2. K. and Childers. The order was quashed, because it did not set forth, that the child was born in the parish ordered to be relieved. *Seff. C. V.* 1. 237.

And in K. and Greaves, E. 10 G. 2. The parish where the child is born is only to be indemnified; and if the bastard has acquired a settlement elsewhere, the father is then discharged. *Nelf. Bast.*

And upon this head it is observable, that there is one case, which altho' it frequently happeneth, yet is not within the statute; and that is, where a bastard is born in a parish where the mother hath no settlement. The child shall go with its mother for nurture, whilst it is a nurse child, to her place of settlement; and such place can have no remedy upon this statute, for that the child was not born there. And it seemeth that the parish, where it was born, shall not be liable to maintain it, until the child shall be lawfully removed thither, as to its place of settlement.

Upon which ground also, it seemeth not safe, to grant a certificate with a woman with child of a bastard, thereby indemnifying the parish where it shall be born, and promising to receive and provide for the bastard child when it shall become chargeable. For the parish granting such certificate, can have no remedy against the mother or reputed father, but only the parish where the child was born; nor can that parish neither, because it is indemnified.

Whereas it hath appeared unto us] *K. and Beard*. The examination of the woman must be by two justices, as well as the ordering part; for the examination is a judicial act, and ought to be by both; and it is not enough that one should examine, and make report to the other; but if they are both present, and one only examine, it is well enough, for it is in fact the examination of both. 2 *Salk.* 478.

As well upon the complaint of the churchwardens and overseers] An order made without the complaint of the parish officers, is not good. *Black.* 44.

But it is said to have been otherwise held, by *Hardwick*, Ch. J. and the court, in the case of *K. and Jenkins*, H. 9 G. 2. *Par. L.* 178.

As upon the oath of the said A. M.] It seemeth, that the mother may be examined upon oath, concerning the reputed father, and of the time and other circumstances; for that in this case, the matter, and the trial thereof, dependeth chiefly upon the examination and testimony of the mother. *Dalt. c.* 11.

Chargeable to the said parish] Order to provide for a bastard child: Exception was taken, that it doth not appear in the order, that he is chargeable to the parish, or likely to be so. Quashed. *Comb.* 32.

But in *K. and Matthews*, H. 8 W. Exception was taken, that the order doth not set forth that the child is likely to become chargeable: But this exception was overruled; for that it is self evident, that every bastard child is likely to become chargeable. 2 *Salk.* 475, 6.

Summons] If the order do not set forth, that the defendant was duly summoned to appear, and for what cause, it ought to be quashed. *K. and Glegg, Cas. in L. and E.* 4.

T. 6 & 7 G. 2. K. and Cotton. Motion for an information against the defendant, who with another justice made an order of bastardy upon one *Fitzgerald*, without summoning him to appear before them to make his defence: Upon appeal to the sessions he was acquitted, and put to great expences; which it was insisted was contrary to natural justice. By Mr. Justice *Page*; No man in an office can be supposed to be so ignorant, as not to know it is against natural justice, to convict a man without a summons; the examination ought to be so made, that the truth may appear, and that must be by examining both sides, otherwise it is partial; the scandal, the expence, and the disorder in Mr. *Fitzgerald's* family, are things that ought to be considered; here was no taking
by

by warrant, and therefore an action of false imprisonment would not lie; and this is the only method can be used, to punish the justice. Mr. J. *Probyn*; The principal objection about a summons is right in law, and in reason; possibly an action on the case might be framed; there may possibly have been only an error in judgment, and it is hard to grant an information. Mr. J. *Lee*; If this was strictly a conviction, against which no appeal lies, an information ought to be granted; but he thought the matter was not so very strong in the case of orders. And the rule was discharged. *Sess. C. V. 1. 179.*

E. 8 G. 2. K. v. Taylor and Neale. Motion in the king's bench for an information against the defendants, two justices of *Devonshire*, for making an order on one *Nicholas Mould*, adjudging him to be the putative father of a bastard child, without summoning him, and also for refusing to hear his witnesses. On shewing cause, it appeared that he was summoned by a third justice, which the court held to be sufficient; but that the defendant not appearing himself, the justices would not hear his witnesses. And by the court, supposing the man was summoned, and did not appear, the justices are not then bound to hear any evidence for him; and this court will not hear any evidence in behalf of a person, who should attend here, and does not. *Sess. C. V. 2. 192.*

Do hereby adjudge] *T. 4 An. 2. and Weston.* The great objection which stuck long with the court, was, that it was said in the order, we the said justices *doth* adjudge, instead of *do* adjudge; and after the case had depended two terms, and been several times stirred, the court for that exception, the last day of the term, quashed the order. *L. Raym. 1198.*

And afterwards, *H. 4 An.* The same justices made another order, with the very same fault in it, *viz. doth* adjudge; and upon a *certiorari*, that was quashed, *L. Raym. 1198.*

Adjudge the said A. F. to be the reputed father] An order was quashed, because there was no adjudication, that the person against whom the complaint was made, was the reputed father. *2 Sid. 363.*

H. 9 G. 2. K. and Jenkins. Motion to quash an order of two justices, whereby they adjudge, that such a person is *not* the putative father of a bastard child, and therefore they discharge him; and the rather, because in such a case the parish cannot appeal, because an appeal is only, when the party refuses to give security to come to sessions. And by the whole court, the two justices have no such authority; for their whole power depends on the statute of 18 *El.* and that is only to take order for punishment of the parties, and for relief of the parish; and this order is for neither the one nor the other. *Sess. C. V. 2. 161.*

The sum of ——— for and towards the lying-in] *M. 12 An. 2. and Odam.* Order for maintenance of a bastard child, was excepted to, because the defendant is upon sight of the order to pay 9*l.* in gross; and after that, so much weekly. And by the court; By the statute the justices are to take order for relief of the parish, and

and keeping of the child, by payment of money weekly, or other sustentation; and this may be only indemnifying the parish for money laid out before the reputed father was found. 1 *Salk.* 124.

The sum of ——— weekly] *E. 20 C. 2. K. and Perkstaff.* It was moved in the court of king's bench, to quash an order for maintaining a bastard child made at the quarter sessions, and the exception was, because it was unreasonable, in respect of the smallness of the sum; namely, but 2*d.* a week for the maintenance of the child: And the court were of opinion that it should be quashed, unless cause shewn; and they said, that altho' none but the justices could declare the father, yet if they were unreasonable in the sum, the court might judge of that. 2 *Sid.* 363.

During so long time as the said bastard child shall be chargeable] *E. 9 W. K. and Barebaker,* Order to pay so much money by the week, till the child shall be fourteen years of age, is naught; for the justices have no power but to indemnify the parish; and that is only to oblige him to maintain the child, as long as it is or may be chargeable. 1 *Salk.* 121. 2 *Salk.* 478.

An order that the putative father should pay so much a week, until it should be able to get its living by working, was quashed; it should have been for so long time, as the child shall be chargeable to the parish. 1 *Vent.* 210.

T. 9 W. Browne's case. The justices cannot order a sum, for putting out the child an apprentice. *Comb.* 448.

But in the case of *K. and Blackwell, M. 4 G.* The order was, that the reputed father shall pay to the churchwardens so much weekly from the time of the birth of the child, until he shall attain the age of 13 years, if he shall so long continue chargeable; and when he shall attain the age of 12 years, to pay 4*l.* to put him out apprentice, and this was held good. The same resolved, *Caf. in L. and E.* 85. And *H. 2 G. K. and Stone, Nelf. Bast.*

But it seemeth not necessary to incumber the order therewith; for it may be the same thing if the parish bind him out, and pay the money; for until such sum shall be run off by the weekly payments, so long the child continues chargeable.

But after all, so far as these errors above rehearsed shall affect only the form of the order, and not the merits thereof; the same may be amended at the sessions, by the 5 *G. 2. c. 19.* before the appeal shall be proceeded upon, and then the court shall go upon the merits.

Having thus distinctly considered the form of an order of bastardy as established upon the statutes aforegoing, I proceed to some other resolutions upon the said statutes, concerning divers matters not relating to the form of such order: Which are these.

1. In what time the order shall be made.
2. Whether the justices can order security to be given to perform their order.
3. To what sessions the appeal against the order shall be.
4. Whether the sessions can proceed originally in the case of bastardy.
5. Whether on appeal it is necessary that the reputed father shall be present in court.
6. In what case the order of the sessions shall be final.
7. In what manner the sessions shall enforce their own order.

8. What

8. What shall be done if the two next justices cannot agree.
9. What security shall be requisite to indemnify the parish, to prevent any order from being made.

(1.) *In what time the order shall be made.* There is no time limited by the statute, in which the order shall be made; so that it may be made at any time after the birth of the child.

And in the case of *K. and Miles, M. 1 G.* On motion to quash an order of bastardy, it was resolved, that if the father run away, and return, tho' 14 years after, yet an order to fix the child on him is good; for there is no statute of limitation in these cases. *Sess. C. V. 1. 77.*

But by the aforesaid statute of 6 G. 2. if the reputed father is in prison, and no order shall be made in six weeks after the birth of the child, he may in such case be discharged from his imprisonment; but the order nevertheless made upon him afterwards, will be good.

(2.) *Whether the justices can order security to be given to perform their order.* *E. 2 An. 2. and Chaffey.* Exception was taken, that the order was, that the defendant should give security for payment of the sum by them imposed for the maintenance of the child; when it did not appear, that the defendant had disobeyed the order in point of payment. And for this reason, the order was quashed as to that part. *L. Raym. 858. 3 Salk. 66.*

And with this all the other resolutions do agree. *T. 11 An. 2. and Clogg. 4 G. K. and Buckle. T. 8 & 9 G. 2. K. and Messenger. Nels. Bast.*

And so are the words of the statute; *viz. if the party shall not perform the said order*, he shall then (so making default) be committed, unless he shall put in surety to perform the same, or to appear at the sessions.

And therefore that part of the form of an order, which directeth such security to be given, and which runs thro' almost all the books, seems to be not good.

And here then will be a gap left open, by a defect in the law, for the reputed father to run away, and (if he leave no effects) to avoid the future payments, by obeying the order for the present, in paying off so far as shall be then due; for here seemeth to be no power to compel security to be given for the future, unless only in the case of disobedience.

(3.) *To what sessions the appeal against the order shall be.* The statute directs, that the appeal shall be *to the next general sessions of the peace to be holden in that county, where such order shall be taken.*

Next general sessions] That is to say, The next general sessions after notice of such order. *3 Keb. 551.*

General sessions] *T. 10 W. K. and Sharw.* An order was made by two justices, adjudging *Sharw* to be the reputed father of a bastard; whereupon he appealed to the next *quarter sessions* after notice; where the order of the two justices was discharged: And now it was moved to quash the order of sessions, because by the statute the appeal must be to the next *general sessions*, and there might

might have been a general sessions before the general quarter sessions, as in *London* and *Middlesex*, where there are four general sessions in the year, besides the quarter sessions. And quashed for this fault. 2 *Salk.* 482.

To be holden in that county] It was moved to quash an order, for that it was at the sessions of the peace in the county aforesaid, and did not say for the county; but this was overruled, for that there is not so much strictness required in orders, as there is in indictments. 1 *Ventr.* 37.

To which may be added also, that this is according to the words of the statute.

In that county where such order shall be taken] Resolved, that this shall be intended of the next sessions of that part of the county, where it was made, and not at the next sessions in the county at large; for that would be mischievous in many counties, where there are several sessions in distinct parts of the county. 1 *Sid.*

149.

(4.) *Whether the sessions can proceed originally in the case of bastardy.* It hath been much disputed, whether the sessions may make an original order, in the case of bastardy, by the statute of the 3 *Car. c. 4.* in like manner as the two justices may do by the 18 *El.* If a conjecture may be allowed, after so long a space of time from the making of the said acts, and after the opinions of so many learned men thereupon, it should be this: In the first place, as to those who hold the negative, namely, that the sessions cannot proceed originally upon the said statute of 3 *Car.* it is clearly observable, albeit their opinion may be true, that it resteth upon a false foundation, namely, upon a supposition that the said statute of 3 *Car.* is expired; which is none other than a palpable oversight committed by one author, and followed by others without examination (a thing not unusual in this kind of learning). Supposing therefore that the statute of the 3 *Car.* is of force, let us put the case, that the sessions may proceed originally thereupon, in like manner as the two justices may do by the 18 *El.* then there will appear this difficulty upon the face of it, that after the sessions shall have made such order, if the party shall make default in the performance thereof, then (according to the directions of the said statute of 18 *El.*) the party so making default shall put in surety to perform the said order, or else personally to appear at the next sessions, to abide such order as shall there be made in the premisses, or shall be committed for his refusal. Which implies an appeal from one sessions to another; a thing which is unknown to our laws, an appeal always supposing a removing the cause from an inferior to an higher jurisdiction, and not from the same court to the same court. Now the obvious resolution of the matter perhaps may be this; the statute of the 18 *El.* which was a temporary act, doth require, that if the party shall make default in performance of the order of the two justices, they shall commit him to gaol, unless he shall put in surety to perform the said order, or else personally to appear at the next sessions, and to abide such order as the justices there shall take in that behalf (if they then and there

there shall take any) and that if at the said sessions they shall take no other order, then to perform the said order before made; without any special power given to the sessions, either by that act, or by any other, to take any order therein at all. Then comes the statute of 3 Car. c. 4. which enacteth, that the said statute of 18 El. shall be continued, together with this supplementary clause, that the justices in sessions may do and execute all things concerning the said statute of 18 El. that by the justices in the several counties are by the said statute limited to be done. And then the whole taken together will amount to no more than this; that the two justices out of sessions shall take order for the punishment of the mother and reputed father, and for the relief of the parish, and that if upon appeal the matter shall come before the sessions, the sessions shall have power to determine thereupon, and to take such order therein, as the two justices may do out of sessions.

So that upon this supposition, the statute of the 3 Car. doth not give the sessions a power to proceed originally, and so deprive the party of the benefit of an appeal, but only explains the power intended by the 18 El. of the sessions upon an appeal to hear and determine the same.

And nothing is more frequent, in the like cases, than for an act continuing a former act, to add an explanatory clause of some doubtful part of such former act; of which we have an instance at hand in this very same statute of 3 Car. c. 4. which, continuing the statute of the 43 El. concerning the power given to the overseers to bind out poor children apprentices, adds this explanatory clause, *viz.* that all persons to whom the overseers shall bind such poor children apprentices, may take and receive them as apprentices.

(5.) *Whether on appeal it is necessary that the reputed father shall be present in court.* H. 8 W. K. and Matthews. The court will not quash an order of bastardy, unless the reputed father be present in court. 2 Salk. 475.

And the reason is, that if the cause shall go against him, he may be proceeded against, in case of contempt or disobedience.

(6.) *In what case the order of the sessions shall be final.* M. 13 G. K. and Tenant. The order of two justices being quashed upon the merits by the sessions on an appeal, the defendant is thereby legally acquitted, and cannot be drawn in question again for the same fact. L. Raym. 1423. 4.

If the two next justices make an order, and the party appeals to the next sessions, and they alter, or discharge, or confirm that order, any other sessions cannot order any thing contrary thereto, for the order upon the appeal is final. Cro. Car. 341, 350. Pridgeon's case.

T. 1 G. 2. K. and Arundell. Two justices make an order, that the defendant shall pay a sum in gross, and also 2 s. a week so long as the child shall be chargeable. The party appeals to the sessions, who confirm the order. At a subsequent sessions, the father of the bastard desired to have the keeping of it, and that the payment of the 2 s. a week should cease; which the second sessions ordered. Motion was made to quash this last order of sessions,

sessions, because in this case they had no jurisdiction. And the court held, that the second sessions had no authority to order the subtraction of the 2 s. a week; and the order was quashed, because it was made out of time (being three years after the appeal), and therefore the justices had no jurisdiction. *Seff. C. V. 1. 234.*

(7) *In what manner the sessions shall enforce their own order.* T. 4 An. 2. and Weston. The case was, Weston had appealed to the sessions, where the order was confirmed, and he committed for not paying the money ordered: And exception was taken, that the sessions should have proceeded against him upon his recognizance. And by Holt Ch. J. If they proceed on the 18 El. the sessions hath no power to commit, but to proceed on his recognizance; but if on the 3 C. the sessions may commit as the two justices might have done, that is, unless the party put in security to perform the order, or to appear at the next sessions. 1 Salk. 122. L. Raym. 1157.

Note; This case goes upon the supposition that the sessions may proceed originally on the statute of 3 C. c. 4. and thereupon inferreth the absurdity abovementioned, of appealing from one sessions to another. But the method of proceeding against the reputed father, in case of disobedience to the order of sessions, seemeth to be not difficult; if he is bound over to abide the order of the sessions, his recognizance may be estreated; if he hath not been bound over, he may be indicted, fined, and imprisoned for the contempt.

(8) *What shall be done if the two next justices cannot agree.* In this matter the statute of 18 El. is different from most other statutes; for generally where power is given to two justices, the statutes express that two or more justices may do such a thing; but here the statute saith only, that two justices, dwelling in or next unto the parish, shall have power to take order therein. And Mr. Dalton makes a *quære*, what shall be done, if the two next justices cannot agree in the order, or shall make no order: And this case, tho' likely enough to happen sometimes, hath not yet been determined. If they will not proceed at all, there seemeth to be no doubt, but that they may be compelled by a *mandamus*; and if they cannot agree, yet still it seemeth, that they may in like manner be compelled, for till that is done, they have taken no order for the relief of the parish, which the statute requires that they shall do. But whether, if one of the next justices shall refuse, and another not the next shall or may act in such case, doth not appear to have been adjudged.

(9) *What security shall be requisite to indemnify the parish, to prevent any order from being made.* E. 11 An. 2. and Smith. If the father will take the child (and the mother is willing to part with it, being a nurse child) he must do at first; and by suffering the order to be made, it shall be deemed a refusal in law: besides, he shall not then be suffered; he may sell it, or make away with it, as too often happens. *Cas. of S. 64.*

Whether a bond or other security ought to be made to the churchwardens and overseers and their successors, or to their executors or administrators, hath been questioned; concerning which,
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the author of the readings upon the statutes saith thus: Those gentlemen who have taken upon them, to direct the officers, to have such bonds or other securities made to them and their successors, would do well to consider, whether the churchwardens and overseers are such a corporation as can purchase, sue and be sued. And whether bonds, being things in action, it may not be difficult for the successors of the churchwardens and overseers, to whom they were made, to maintain an action, on a bond made to their predecessors. 'Tis true, churchwardens may maintain an action for the goods of their church. But they are not such a corporation, as can take or purchase lands, or take securities for the use of their church, except in *London*. And it never was pretended, that the churchwardens and overseers of the poor are a corporation in any respect, in relation to the poor, and consequently, can neither sue nor be sued as such. *Read. Bast.*

IV. Punishment of the mother and reputed father.

By the 18 El. c. 3. Concerning bastards being left to be kept at the charges of the parish where born, to the great burden thereof, and to the evil example and encouragement of lewd life, it is enacted, that the two next justices shall take order therein, as well for the punishment of the mother and reputed father, as for the relief of the parish.

And by 7 J. c. 4. Every lewd woman which shall have any bastard which may be chargeable to the parish, the justices of the peace shall commit such lewd woman to the house of correction, there to be punished and set on work, during the term of one whole year; and if she shall afterwards offend again, then to be committed to the said house of correction as aforesaid, and there to remain, until she can put in good sureties for her good behaviour, not to offend so again. S. 7.

For the punishment of the mother and reputed father] That is, by corporal punishment: But a woman shall not be punished both by corporal punishment, and by being sent to the house of correction, for that no one ought to be punished twice for one and the same offence. *Dalt. c. 11.*

Child which may be chargeable] It seemeth by these words, that such a woman shall not be sent to the house of correction, until after the child be born, and that it be living; for it must be such a child as may be chargeable to the parish. *Dalt. c. 11.*

And if she will discharge the parish of keeping the bastard, she cannot be punished by this statute of 7 J.

But nevertheless she may be punished (Lord Coke says) by the statute of 18 El. 2 Inst. 733.

Which opinion seems justly questionable; for the preamble of the said act of 18 El. (as hath been rehearsed) seemeth to restrain the jurisdiction of the justices to the parents of such bastard children only as may be chargeable.

But the proper punishment in such case, seems to be by presentment in the spiritual court.

Bastards.

The justices of the peace shall commit] It seemeth that such commitment ought to be by two justices at the least; and by comparing the two statutes together, it seemeth fittest for the two next justices authorized by the 18 El. *Dalt. c. 11.*

Shall commit such lewd woman] But such punishment shall not be, until after that the woman is delivered of her child; neither are the justices to meddle with the woman, until the child be born, and she strong again. *Dalt. c. 11.*

Also it seemeth, that such bastard child is not to be sent with the mother to the house of correction, but rather that the child should remain in the town where it was born (or settled with the mother) and there to be relieved by the work of the mother, or by relief from the reputed father; and yet the common opinion and practice is otherwise, *viz.* to send the child with the mother to the house of correction; and this may also seem reasonable, where the child sucketh on the mother. *Dalt. c. 11.*

But it seemeth much the best, to commit the mother only, and not the child, but leave it to her choice whether she will take it with her; and if she will not, then to send it to its lawful place of settlement.

Then to be committed to the said house of correction as aforesaid] Which words do imply that she shall not be punished as for a second offence, unless she hath been committed and punished in the house of correction for the first.

V. Mother or reputed father running away.

Whereas the putative fathers and lewd mothers of bastard children run away out of the parish and sometimes out of the county, and leave the bastard children upon the charge of the parish where they are born, altho' they have estates sufficient to discharge the parish; it shall be lawful for the churchwardens and overseers of such parish where any bastard child shall be born, to take and seize so much of the goods, and receive so much of the annual rents of the lands of such putative father or lewd mother, as shall be ordered by any two justices, towards the discharge of the parish, to be confirmed at the sessions, for the bringing up and providing for such bastard child; and thereupon the sessions may make an order for the churchwardens or overseers of such parish, to dispose of the goods by sale or otherwise, or so much of them for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits of the lands, or so much of them as shall be so ordered by the sessions. 13 & 14 C. 2. c. 12. s. 19.

E. 2 An. Q. and Chaffey. Order to the churchwardens and overseers, to seize of the putative father's goods, what they should judge proper for securing of the parish, quashed; for that it should be, what the justices think proper, and not what the churchwardens and overseers think proper. *L. Raym. 858.*

VI. Murdering

VI. Murdering a bastard child.

1. By the 21 J. c. 27. *If any woman be delivered of any issue of her body, male or female, which being born alive, should by the laws of this realm be a bastard, and she endeavour privately, either by drowning, or secret burying thereof, or any other way, either by her self, or the procuring of others, so to conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed, she shall suffer death as in case of murder, except she can prove by one witness at the least, that the child was born dead.*

Concealing the death of a bastard child.

And it hath been adjudged, that in order to convict a woman by force of this statute, there is no need that the indictment be drawn specially, or conclude against the form of the statute; for the statute doth not make a new offence, but only make such concealment an undeniable evidence of murder. 2 Haw. 438.

Also, it hath been agreed, that where a woman appears to have endeavoured to conceal the death of such child within the statute, there is no need of any proof that the child was born alive, or that there were any signs of hurt upon the body, but it shall be undeniably taken that the child was born alive, and murdered by the mother. 2 Haw. 438.

But it hath been adjudged, that where a woman lay in a chamber by her self, and went to bed without pain, and waked in the night, and knocked for help but could get none, and was delivered of a child, and put it in a trunk, and did not discover it till the following night, yet she was not within the statute, because she knocked for help. 2 Haw. 438.

Also, it hath been agreed, that if a woman confess her self with child beforehand, and afterwards be surprized and delivered, no body being with her, she is not within the statute, because there was no intent of concealment, and therefore in such cases it must appear by signs of hurt upon the body, or some other way, that the child was born alive. 2 Haw. 438.

2. If a woman be with child, and any gives her a potion to destroy the child within her, and she take it, and it works so strongly that it kills her, this is murder; for it was not given to cure her of a disease, but unlawfully to destroy her child within her; and therefore he that gives her a potion to this end, must take the hazard, and if it kills the mother, it is murder. 1 H. H. 429, 30.

Giving a potion to cause abortion.

If a woman be quick or great with child, if she take, or another give her any potion to make an abortion, or if a man strike her, whereby the child within her is killed, tho' it be a great crime, yet it is not murder nor manslaughter by the law of England, because it is not yet in *rerum natura*, nor can it legally be known, whether it were killed or not: So it is, if after such child were born alive, and after die of the stroke given to the mother, this is not homicide. 1 H. H. 433.

But if a man procure a woman with child, to destroy her infant when born, and the child is born, and the woman in pursu-

ance of that procurement kill the infant; this is murder in the mother, and the procurer is accessory. 1 H. H. 433.

VII. Capacity of a bastard child as to inheritance.

A bastard can have no name of reputation as soon as he is born; but after he is born, and hath gained by time a name by reputation, he may purchase by his reputed name, to him and to his heirs; tho' he can have no heirs but of his body. 1 Inst. 3. 6 Co. 65.

A bastard is *terminus a quo*; he is the first of his family, for he hath no relation of which the law takes any notice; but this must be understood as to civil purposes, for there is a relation as to moral purposes, therefore he cannot marry his own mother, or bastard sister, or the like. 3 Salk. 66.

A. Voluntary examination of a woman with child of a bastard; by 6 G. 2. c. 31.

Westmorland. **T**HE examination of A. M. of — in the said county, singlewoman, taken upon her voluntary oath, before me — one of his majesty's justices of the peace in and for the said county, this — day of —

Who saith, that she is now with child, and that the said child is likely to be born a bastard, and to be chargeable to the parish of — in the said county, and that A. F. of — in the said county, weaver, is the father of the said child.

Taken and signed the day and year
abovewritten, before me

The mark of
† A. M.

J. P.

Note; these same forms will serve, with a very little variation, after the birth of the child.

B. Warrant for apprehending the reputed father, before the birth; on 6 G. 2. c. 31.

Westmorland. } To the constable of —

WHEREAS A. M. of — in the said county, singlewoman, hath by her voluntary examination taken in writing upon oath, before me — one of his majesty's justices of the peace in and for the said county, this present day declared her self to be with child, and that the said child is likely to be born a bastard, and to be chargeable to the parish of — in the said county, and that A. F. of — in the said county, weaver, is the father of the said child; And whereas O. P. one of the overseers of the poor of the parish of — aforesaid, in order to indemnify the said parish in the premisses, hath applied to me to issue my warrant for the apprehending of the said A. F. I do therefore hereby command you,

you, immediately to apprehend the said A. F. and to bring him before me or some other of his majesty's justices of the peace for the said county, to find security to indemnify the said parish of ——— or else to find sufficient surety for his appearance at the next general quarter sessions [or, next general sessions] of the peace to be holden for the said county, then and there to abide and perform such order or orders as shall be made, in pursuance of an act passed in the eighteenth year of the reign of her late majesty Queen Elizabeth, concerning bastards begotten and born out of lawful matrimony. Given under my hand and seal, the ——— day of &c.

C. Commitment thereupon; by the 6 G. 2. c. 31.

Westmorland. } To the constable of ——— in the said county, and
to the keeper of the house of correction [or, common gaol] at ——— in the said county.

WHEREAS A. M. of ——— singlewoman, in her voluntary examination taken in writing and upon oath, the ——— day of ——— now last past, before me ——— one of his majesty's justices of the peace in and for the said county, hath declared herself to be with child, and that the said child is likely to be born a bastard, and to be chargeable to the said parish of ——— and hath charged A. F. of ——— gentleman, with having gotten her with child of the said child; And whereas the said A. F. being now personally present before me, being brought by my warrant, upon application for that purpose to me made, by O. P. one of the overseers of the poor of the said parish, hath refused to give security to indemnify the said parish, and hath also refused to enter into a recognizance with sufficient surety, upon condition to appear at the next general quarter sessions [or, next general sessions] of the peace to be holden for the said county, and to abide and perform such order or orders as shall be made in pursuance of an act passed in the eighteenth year of the reign of her late majesty Queen Elizabeth, concerning bastards begotten and born out of lawful matrimony: These are therefore to command you the said constable, to take and convey the said A. F. to the house of correction at ——— in the said county, and to deliver him to the keeper thereof, together with this warrant. And I do hereby command you the said keeper of the said house of correction, to receive the said A. F. into your custody in the said house of correction, and him there safely to keep, until he shall give such security, or enter into such recognizance as aforesaid, or be otherwise lawfully delivered from thence. Given under my hand and seal the ——— day of &c.

D. Bond to indemnify the parish.

KNOW all men by these presents, that we A. F. of ——— in the county of ——— gentleman, and A. S. of ——— yeoman, are held and firmly bound unto ——— churchwardens, and ——— overseers of the poor of the parish of ——— in the said

Bastards.

said county (in trust for the parishioners of the said parish) in — pounds of good and lawful money of Great Britain, to be paid to the said — or their certain attorney, their executors, administrators, or assigns: To which payment well and truly to be made, we bind our selves, and each of us, jointly and severally, and our and each and every of our heirs, executors, and administrators, firmly by these presents; Sealed with our seals, and dated the — day of — in the — year of the reign of our sovereign lord George the Second, of Great Britain, France, and Ireland, King, defender of the faith, and so forth, and in the year of our lord —.

The condition of this obligation is such, that whereas A. M. of — singlegwoman, hath in and by her voluntary examination, taken in writing and upon oath, before — one of his majesty's justices of the peace in and for the said county of — declared that she is with child, and that the said child is likely to be born a bastard, and to be chargeable to the said parish of — and that the abovebounden A. F. is the father of the said child; If therefore the said A. F. and A. S. or either of them, their or either of their heirs, executors, or administrators, do and shall from time to time, and at all times hereafter, fully and clearly indemnify and save harmless, as well the above named churchwardens and overseers of the poor of the said parish of — and their successors for the time being, as also all and singular the other parishioners and inhabitants of the said parish of — which now are, or hereafter shall be for the time being, of and from all manner of costs, taxes, rates, assessments, and charges whatsoever, for or by reason of the birth, education, and maintenance of the said child, and of and from all actions, suits, troubles, and other charges and demands whatsoever, touching or concerning the same, that then this present obligation to be void, otherwise of force.

Signed, sealed, and delivered (having been
first duly stamped) in the presence of

A. F.
A. S.

E. Condition of a recognizance for the father to appear at sessions; on 6 G. 2. c. 31.

THE condition of this recognizance is such, that if the said A. F. do and shall appear at the next general quarter sessions [or, the next general sessions] of the peace to be holden for the said county, and shall then and there abide and perform such order or orders as shall be made in pursuance of an act passed in the eighteenth year of the reign of her late majesty Queen Elizabeth, concerning bastards begotten and born out of lawful matrimony, upon the complaint of the churchwardens and overseers of the poor of the parish of — in the said county, for begetting a child on the body of A. M. singlegwoman, which child is likely to be born a bastard, and to be chargeable to the said parish of — Then this recognizance to be void, otherwise of force.

If it is after the birth, then say, For begetting a bastard child, born in the parish of — in the said county, on the body of A. M. singlegwoman, which child is now chargeable [or, likely to be chargeable] to the said parish of — Then this recognizance to be void.

F. Warrant

F. Warrant of the two next justices, for the mother, with a summons for the reputed father, to make the order of filiation and maintenance; on the 18 *El. c. 3.*

Westmorland. } To the constable of _____

WHEREAS it duly appears unto us _____ two of his majesty's justices of the peace in and for the said county, one whereof is of the Quorum, and both of us residing next unto the limits of the parish church within the parish of _____ in the said county, as well upon the complaint of the churchwardens and overseers of the poor of the said parish, as on the oath of A. M. of _____ singlerwoman, that on the _____ day of _____ last past, she the said A. M. was delivered of a male bastard child at _____ in the said parish, and that A. F. of _____ in the said county, taylor, is the father of the said bastard child, and that the said bastard child is now living, and chargeable [or, likely to be chargeable] to the said parish of _____ These are therefore to command you to bring the said A. M. before us, at the house of _____ in _____ in the said county, on _____ the _____ day of _____ at the hour of _____ in the afternoon of the same day, to be by us further examined, touching the premisses; And that you give notice thereof, unto the said A. F. that he may likewise be at the time and place aforesaid, to make his lawful defence: To the end that upon the examination of the cause and circumstance, we may take such order therein, as to right doth appertain. And what you shall do in the execution hereof, you are to make known unto us at the time and place aforesaid. Given under our hands and seals the _____ day of &c.

G. Order of filiation and maintenance, for the reasons there specified, is inserted in the body of the title foregoing.

H. Condition of a recognizance to appear at the sessions, after the order not performed; on 18 *El. c. 3.*

WHEREAS by an order under the hands and seals of us _____ two of his majesty's justices of the peace for the said county, one whereof is of the Quorum, and both of us residing [in, or] next unto the limits of the parish church within the parish of _____ in the said county, A. F. of _____ in the said county, taylor, is adjudged to be the reputed father of a bastard child born lately of the body of A. M. of _____ singlerwoman, at _____ in the said parish of _____ [And then set forth what was ordered therein further] And whereas the said A. F. hath not observed nor performed the said order;

The condition therefore of this recognizance is such, that if the abovebound A. F. shall observe and perform the said order, or shall personally appear at the next general sessions of the peace, to be holden in and for the said county, and shall then and there abide such order as shall be then made by the court, concerning the said bastard child, if any such order shall be then made; and if no such order shall be then made or taken by the said court, if the said A. F. do and shall perform the order already by us made as aforesaid: Then this recognizance to be void.

Battery. See Assault.

Bawdy houses. See Lewdness.

Beer. See Excise.

Behaviour. See Surety.

Bent.

WHEREAS on the north west coasts of *England*, and especially in the county of *Lancaster*, the sea is bounded, and the lands are prevented from being overflowed, by large hills, the sand of which is so loose, that in dry weather it is thrown by the winds on the adjacent lands, to the damage thereof, and the danger of the inhabitants, who are exposed thereby to the inundation of the sea; to prevent which, the land owners are at great charges annually to plant and maintain a sort of rush or shrub called *starr* or *bent*; but many disorderly persons pluck up and carry away the same, to make matts and brushes: Therefore if any person, without consent of the owner, shall cut, pull up, or carry away any *starr* or *bent* off the said hills on the north west coasts of *England*, on complaint thereof on oath to one justice, the offender shall be summoned, and on default of appearing, the justice shall issue his warrant to apprehend and bring him before him; and being convicted on oath of one witness, or confession, he shall forfeit 20 s. half to the informer, and half to the owner of the bent, by distress; and for want of sufficient distress, to be sent to the house of correction for three months, to be kept to hard labour; and for a second offence, to be committed to the house of correction for one year, to be whipt and kept to hard labour.

And if any *starr* or *bent* shall be found within five miles of the said sand hills, the persons convicted of having the same in custody shall forfeit 20 s. in like manner, and for want of sufficient distress shall suffer three months imprisonment, and hard labour in the house of correction.

But this shall not restrain any persons from the exercise of any ancient prescriptive right, to cut *starr* or *bent* on the sea coasts in the county of *Cumberland*. 15 & 16 G. 2. c. 33. s. 6, 7, 8.

Bigamy.

Bigamy.

AS *bigamy* in our law seems for the most part to be used to signify the having of two wives successively one after the other, I shall take the liberty to transfer the offence which is commonly treated of under this title unto the title *Polygamy*, which signifies more properly the having two or more wives or husbands at the same time.

Billets. See Fuel.

Black act.

IN order to avoid repeating the same regulations so many times over, as the offences hereunder mentioned are treated of under their respective titles in the different parts of this book; it is thought proper, to insert here at large, the whole law relating to them all together, and to refer from thence to this title for the knowledge of the several particulars.

By the 9 G. c. 22. (commonly called the *Black act*) the which is required to be read at every sessions and leet; and by the 6 G. 2. c. 37. and the 10 G. 2. c. 32. which are incorporated with the Black act, and therewith have continuance (by 24 G. 2. c. 57.) to Sep. 1. 1757, &c. and by the 27 G. 2. c. 15. it is enacted as followeth:

If any person or persons, being armed with swords, fire-arms, or other offensive weapons, and having his or their faces blacked, or being otherwise disguised shall (1) appear in any forest, chase, park, paddock, or grounds inclosed with any wall, pale, or other fence, wherein any deer have been or shall be usually kept, or (2) in any warren or place where hares or conies have been or shall be usually kept, or (3) in any high road, open heath, common, or down; or (4) shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer; or (5) unlawfully rob any warren or place where conies or hares are usually kept; or (6) shall unlawfully steal or take away any fish out of any river or pond:

Or if any person or persons (*that is, whether armed and disguised or not*) shall (7) unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer, fed or kept in any places in any of the king's forests or chases, which are or shall be inclosed with pales, rails, or other fences; or in any park, paddock, or grounds inclosed, where deer have been or shall be usually kept; or (8) shall unlawfully and maliciously break down the head or mound of any fish pond, whereby the fish shall be lost or destroyed; or (9) shall unlawfully and maliciously kill, maim, or

wound any cattle; or (10) cut down or otherwise destroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, shelter, or profit; or (11) shall set fire to any house, barn, or outhouse, or to any hovel, cock, mow, or stack of corn, straw, hay, or wood; or (12) shall wilfully and maliciously shoot at any person in any dwelling house, or other place; or (13) shall knowingly send any letter, without any name subscribed thereto, or signed with a fictitious name, demanding money, venison, or other valuable thing; [or threatening to kill or murder any of his majesty's subjects, or to burn their houses, outhouses, barns, stacks of corn or grain, hay or straw; 27 G. 2. c. 15.] or (14) shall forcibly rescue any person being lawfully in custody of any officer or other person, for any the said offences; or (15) shall by gift or promise of money, or other reward, procure any of his majesty's subjects to join him or them in any such unlawful act; or (16) shall unlawfully and maliciously break down, or cut down the bank of any river, or any sea bank, whereby any lands shall be overflowed or damaged; or (17) shall unlawfully and maliciously cut any hop binds growing on poles in any plantation of hops; or (18) shall wilfully and maliciously set on fire, or cause to be set on fire, any mine, pit, or delph of coal or cannel coal:

Every person so offending, being thereof lawfully convicted (in any county in *England*) shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy; but not to work corruption of blood, nor forfeiture of lands or goods.

Note; I have added the words above (*whether armed and disguised or not*) to obviate an error, as I take it, which runs thro' most of the books, in a very material part of this statute. They do suppose that a person must be *armed and disguised* to commit any of the offences abovementioned, even the sending of a threatening letter, or persuading another to be an accomplice; whereas it seemeth somewhat clear, that to be armed and disguised is only necessary to constitute any of the six first offences, and that any person whatsoever may be guilty of any of the other following offences, whether armed and disguised or not.

And for the more easy and speedy bringing the offenders to justice, if any person shall be charged with being guilty of any the said offences, before any two justices where the offence shall be committed, by information of one or more credible persons on oath by them to be subscribed, the said justices shall forthwith certify under their hands and seals, and return such information to one of the principal secretaries of state; who shall lay the same, as soon as conveniently may be, before the king in his privy council: whereupon the king may make order in such his council, requiring the offender to surrender himself in forty days, to any of the justices of the king's bench, or to any justice of the peace, to the end that he may be forthcoming to answer the said offence according to due course of law; which order shall be printed and published in the next gazette, and shall be forthwith transmitted to the sheriff of the county where the offence was committed, and shall

shall (in six days after receipt thereof) be proclaimed by him or his officers, between ten and two of the clock, in the market places, on the market days, of two market towns in the county, near the place where the offence was committed; and a true copy of such order shall be affixed upon some publick place in such market towns: And if such offender shall not surrender himself pursuant to such order, he shall from the day appointed for his surrender, be adjudged convicted and attainted of felony, and shall suffer pains of death, as in case of a person convicted and attainted by verdict and judgment of felony, without benefit of clergy. And the court of king's bench, or judges of assize, on producing to them such order in council, under the seal of the said council, may award execution accordingly.

And if any person, after the time appointed for surrender shall be expired, shall conceal, aid, abet, or succour such offender, knowing him to have been so charged, and to have been required to surrender himself by such order, and shall be lawfully convicted thereof; he shall be guilty of felony without benefit of clergy.

But this shall not hinder any judge, justice of the peace, magistrate, officer, or minister of justice, from apprehending and securing such offender, by the ordinary course of law: And if he be taken and secured before the time of surrender, he shall have his trial by due course of law.

And the inhabitants of the hundred shall make satisfaction (not exceeding 200*l.*) for the damages sustained by the killing or maiming of cattle; cutting down or destroying trees; setting fire to any house, barn, or outhouse, hovel, cock, mow, or stack of corn, straw, hay, or wood; breaking or cutting down the bank of any river, or any sea bank, whereby any lands shall be overflowed or damaged; cutting hop-binds growing on poles in any plantation of hops; setting on fire, or causing to be set on fire, any mine, pit, or delph of coal or cannel coal: the same to be rateably taxed and levied, as in cases of robbery by the statute of 27 *El. c. 13.*

But no person shall be inabled to recover damages, unless he shall by himself or servant, in two days after the damage done, give notice of the offence unto some of the inhabitants of some town, village, or hamlet near to the place where the fact was committed; and shall, in four days after such notice, give in his examination on oath, or the examination on oath of his servant who had the care of the same, before a justice inhabiting in or near the hundred, whether he knows the person or persons that committed the fact, or any of them; and if upon such examination it be confessed, that the examinant knows the said persons or any of them, then such person confessing shall be bound by recognizance to prosecute the offender by indictment or otherwise according to law.

And if an offender be apprehended and lawfully convicted, in six months after the offence committed, the hundred shall not be liable.

And

Black lead.

And the action shall not be commenced but within one year after the offence committed.

And if any person shall apprehend, or cause to be convicted, any such offender abovementioned, and shall be killed, or wounded so as to lose an eye, or the use of any limb, in apprehending or securing, or endeavouring to apprehend or secure any such offender; on proof thereof made at the sessions where the offence was committed, or the party killed or wounded, by the person so apprehending and causing the offender to be convicted, or the person so wounded, or the executors or administrators of the party killed, the justices shall give a certificate thereof to the person wounded, or to the executors or administrators of the person killed; by which they shall be intitled to receive of the sheriff 50 *l.* to be allowed in his accounts; which he shall pay in thirty days from the time the certificate shall be shewed to him, on pain of forfeiting to the party 10 *l.* for which, and for the penalty, the party may bring his action.

Black lead.

IT having been found by experience, that wad, or black cawke, commonly called black lead, is necessary for divers useful purposes, and more particularly in the casting of bomb shells, round shot, and cannon balls, and that the same hath been discovered in one mountain or ridge of hills only in this realm, and great destruction having been made thereof of late years by evil disposed persons; therefore it is enacted, that every person who shall unlawfully break, or by force enter into, any mine or wad hole of wad or black cawke, commonly called black lead, or into any pit, shaft, or vein thereof; or shall unlawfully take and carry away from thence any wad, black cawke, or black lead; or shall aid, hire, or command any person to commit any the said offences, shall be guilty of felony, and the court or judge may order him to be committed to prison, or the house of correction not exceeding one year, to be kept to hard labour, and to be publicly whipt by the common hangman, or by the master of such house of correction, at the times, and places, and in such manner as the court shall think proper; or he may be transported for a term not exceeding seven years; and if he shall voluntarily escape, or break prison, or return from transportation before the time, he shall be guilty of felony without benefit of clergy. 25 G. 2. c. 10. s. 1.

And if any person shall buy or receive any such wad, knowing the same to be unlawfully taken and carried away as aforesaid, he shall be guilty of felony, and be liable to all the penalties inflicted by the laws on persons knowingly buying or receiving stolen goods. S. 3.

Blasphemy and profaneness.

1. **A**LL blasphemies against God, as denying his being or providence; and all contumelious reproaches of Jesus Christ; all profane scoffing at the holy scriptures, or exposing any part of them to contempt or ridicule; impostures in religion, as falsely pretending to extraordinary commissions from God, and terrifying or abusing the people with false denunciations of judgments; and all open lewdness grossly scandalous — are punishable by fine and imprisonment, and also such corporal punishment as to the court shall seem meet, according to the heinousness of the crime. 1 *Harw.* 6, 7. Blasphemy.

2. Also seditious words, in derogation of the established religion, are indictable, as tending to a breach of the peace. 1 *Harw.* 7. Depraving the established religion.

3. No person shall have any benefit of the Toleration act, who shall deny in his preaching or writing, the doctrine of the Blessed Trinity, as it is set forth in the 39 articles. 1 *W. & M. Sess.* 1. c. 18. *f.* 17. Denying the Trinity.

4. If any person shall in any stage play, interlude, shew, may-game, or pageant, jestingly or profanely speak or use the holy name of God, or of Christ Jesus, or of the Holy Ghost, or of the Trinity; he shall forfeit 10*l.* half to the king, and half to him that shall sue. 3 *J. c.* 21. Representing the Deity in stage plays.

5. If any person having been educated in, or at any time having made profession of the christian religion in this realm, shall by writing, printing, teaching, or advised speaking, deny any one of the persons in the Holy Trinity to be God; or shall assert or maintain there are more Gods than one; or shall deny the Christian religion to be true, or the holy scriptures to be of divine authority; and shall be convicted thereof, in any of the courts at *Westminster*, or at the assizes, on the oaths of two witnesses, he shall for the first offence be incapable to have any office ecclesiastical, civil, or military (unless he shall renounce such opinion in the court where he was convicted within four months after such conviction); and for the second offence, he shall be disabled to be plaintiff, guardian, executor, or administrator, to take any gift or legacy, or to bear any office, and shall be imprisoned for three years. 9 & 10 *W. c.* 32. Christians depraving the Christian religion.

But no person shall be prosecuted for any words spoken, unless the information be given to a justice of the peace, within four days after the words spoken, and the prosecution of such offence be within three months after such information. *Id.*

6. In the year 1656, *James Nayler* for personating our Saviour, and suffering his followers to worship him, and pay him divine honours, was sentenced to be set in the pillory, and to have his tongue bored thro' with a red hot iron, and to be whipped, and stigmatized in the forehead with the letter B. Case of James Nayler.

7. All persons in or belonging to his majesty's ships or vessels of war, being guilty of profane oaths, cursings, execrations, drunkenness, uncleanness, or other scandalous actions, in derogation

Bread.

tion of God's honour, and corruption of good manners, shall incur such punishment as a court martial shall think fit to impose; 22 G. 2. c. 33. Art. 2.

For profane cursing and swearing, see title **Swearing**.

Blood corrupted. See **Forfeiture**.

Bone-lace. See **Buttons**.

Books.

IF any book shall be taken or otherwise lost out of any parochial library; any justice may grant his warrant to search for it; and if it shall be found, it shall by order of such justice be restored to the library. 7 An. c. 14. s. 10.

Books popish. See **Popery**.

Bows. See **Game**.

Brandy. See **Excise**.

Brass. See **Pewter**.

Bread.

NOTE; The statutes hereafter following of 8 An. c. 18. 1 G. St. 2. c. 26. and 22 G. 2. c. 46. are but temporary, and by the last mentioned act of 22 G. 2. have continuance to Sep. 1. 1757, &c.

Conspiring to
raise the price.

1. If any bakers shall conspire not to sell bread but at certain prices; every such person shall forfeit 10*l*. for the first offence; and if not paid in six days, he shall be imprisoned twenty days, and have only bread and water for his sustenance; for the second offence 20*l*. or the pillory; and for the third offence 40*l*. or the pillory, and loss of an ear, and to become infamous. And the sessions or leet may hear and determine the same. 2 & 3 Ed. 6. c. 15.

Affize to be set.

2. The mayor, or chief magistrate, and where there are none such, two justices shall from time to time set the affize and weight of bread, having regard to the price of the grain, and making reasonable allowance to the bakers; which shall be set in *averdu-pois*, and not *troy* weight, according to the following table:

The penny loaf.

Price of the bushel of wheat and ba- king.	White		Wheaten		Household		Price of the bushel of wheat and ba- king.	White		Wheaten		Household	
	s.	d.	oz.	dr.	oz.	dr.		s.	d.	oz.	dr.	oz.	dr.
2 0	23	3	34	12	46	5	8 3	5 10	8 7	11 4			
2 3	20	10	30	14	41	3	8 6	5 7	8 3	10 14			
2 6	18	9	27	13	37	1	8 9	5 5	7 15	10 9			
2 9	16	14	25	4	33	11	9 0	5 2	7 12	10 5			
3 0	15	7	23	3	30	14	9 3	5 0	7 8	10 0			
<hr/>													
3 3	14	4	21	6	28	8	9 6	4 14	7 5	9 12			
3 6	13	4	19	14	26	8	9 9	4 12	7 2	9 8			
3 9	12	6	18	9	24	11	10 0	4 10	6 15	9 4			
4 0	11	9	17	6	23	3	10 3	4 8	6 13	9 1			
4 3	10	14	16	6	21	13	10 6	4 7	6 10	8 13			
<hr/>													
4 6	10	5	15	7	20	10	10 9	4 5	6 7	8 10			
4 9	9	12	14	10	19	8	11 0	4 3	6 5	8 7			
5 0	9	4	13	14	18	9	11 3	4 2	6 3	8 4			
5 3	8	13	13	4	17	10	11 6	4 0	6 1	8 1			
5 6	8	7	12	10	16	14	11 9	3 15	5 15	7 14			
<hr/>													
5 9	8	1	12	1	16	2	12 0	3 14	5 13	7 12			
6 0	7	12	11	9	15	7	12 3	3 13	5 11	7 9			
6 3	7	7	11	2	14	13	12 6	3 11	5 9	7 7			
6 6	7	2	10	11	14	4	12 9	3 10	5 7	7 4			
6 9	6	14	10	5	13	12	13 0	3 9	5 6	7 2			
<hr/>													
7 0	6	10	9	15	13	4	13 3	3 8	5 4	7 0			
7 3	6	6	9	9	12	13	13 6	3 7	5 2	6 14			
7 6	6	3	9	4	12	6	13 9	3 6	5 1	6 12			
7 9	6	0	9	0	11	15	14 0	3 5	4 15	6 10			
8 0	5	13	8	11	11	9	14 3	3 4	4 14	6 8			
<hr/>													
								14 6	3 3	4 13	6 6		
								14 9	3 2	4 11	6 5		
								15 0	3 1	4 10	6 3		

8-An. c. 18. f. 2.

3. Explanation of the foregoing table :

In the first column is the price of the bushel of wheat, from 2s. to 15s. a bushel, the allowance of the magistrates to the baker for baking being included ; and in the other columns is the weight of the several loaves : So that, for example, if the price of wheat is 5s. a bushel, and the magistrates allow 1s. 6d. to the baker for baking, then opposite to 6s. 6d. in the first column,

Explanation of
the foregoing
table.

column, will be found the weight of the several loaves; but if the price is 3 s. a bushel, and the allowance 1 s. then the weight of the said loaves will be found over against 4 s. and so of the rest.

By which table may easily be ascertained the weight of larger loaves, by addition; as for example, a two penny loaf (when wheat is at the same rate) is twice as much as the penny loaf, the six penny loaf six times as much, and the eighteen penny loaf eighteen times as much.

Note; The white loaves are half, and the wheaten three quarters of the weight of household loaves.

Price of corn to be certified.

4. And that the assize may be truly set, the prices of grain, meal, and flour in the adjacent markets shall be certified to the said magistrates respectively, on oath, by the clerks of the market, or such other person or persons as they shall appoint. 1 G. St. 2. c. 26. f. 7.

Bread to be marked.

5. And the said officers may direct, how each sort shall be marked, for knowing the baker, price, weight, and sort. 8 An. c. 18. f. 3.

Letters thereon.

6. And more particularly, the maker of bread for sale shall imprint on every loaf of white bread a large Roman W; of wheaten bread, a large Roman WH; of household bread, a large Roman H; on pain of 20 s. to the informer, on conviction by confession or oath of one witness, before such chief magistrate or one justice, to be levied by way of distress; the prosecution to be commenced in three days, and the conviction to be certified to the next sessions, to be there kept on record, and to be seen without fee. 22 G. 2. c. 46. f. 21.

Other regulations.

7. And they shall make such other rules for regulating the baking of bread, and all things concerning the same, as they shall find convenient. 8 An. c. 18. f. 3.

Mixing grain.

8. And if any baker shall put into bread any mixture of any other grain than what is appointed by the assize; he shall forfeit 20 s. in like manner. 8 An. c. 18. f. 3, 4, 5, 7.

Want of weight.

9. And if any baker or other shall bake, sell, or expose to sale any bread deficient in weight one ounce or more; and be convicted (A) thereof in like manner, he shall forfeit to the informer 5 s. for every ounce wanting; and if there want less than an ounce 2 s. 6 d. Complaint to be made in 24 hours within the bills, and within three days elsewhere. 1 G. St. 2. c. 26. f. 5.

Searching and weighing.

10. And the mayor, chief magistrate, or justice may in the day time enter any house, shop, stall, bakehouse, warehouse, or outhouse of any baker or seller of bread, to search for, view, and try the bread; and if any be deficient either in sort, goodness, baking, working, weight, or marking, they may seize the same, and give it to the poor: Any baker or seller resisting, shall forfeit to the informer 40 s. in like manner. 8 An. c. 18. f. 8.

General penalty.

11. As to other defaults in general; a baker not observing such regulations as shall be made as above, shall on conviction (as before) forfeit to the informer 40 s. to be levied by way of distress. 8 An. c. 18. f. 3.

12. Any

12. Any party aggrieved may appeal in writing to the next Appeal. sessions: and the court may award costs to the prosecutor, and commit the offender till he pay the costs, and also the penalty; they may also award costs to the appellant, to be recovered in like manner. 8 *An. c. 18. f. 6.*

13. Any magistrate omitting his duty herein, shall forfeit 20 s. to be recovered by action at law. 8 *An. c. 18. f. 7.* Magistrate omitting his duty.

14. But nothing herein shall prejudice the right or custom of the city of *London*; or the lord of any leet, to set, inquire, and punish the breach of assize of bread, within the leet or view of frankpledge; nor of the clerk of the market. 8 *An. c. 18. f. 10.* Exceptions.

15. By the 3 *G. 2. c. 29. f. 2.* If any shall sell or expose to sale any peck, half peck, or quarter loaf at a higher price than is set by the assize, he shall forfeit 10 s. in like manner as above. Peck loaves included in the assize.

But it is to be observed, that this act hath not continuance with the others abovementioned; but yet it shews the sense of the legislature, that peck, half peck, and quarter loaves may be included within the assize, altho' not mentioned particularly in the table of assize in the act; and then the penalty for this offence (supposing this clause is expired) will be comprehended within the general clause of offences against the magistrates regulations abovementioned.

16. Mr. *Barlow*, on consideration of the whole, makes a doubt, whether the penalties can be levied, or the bread be forfeited, if there be no previous assize set; and with good reason: since it is hard to determine that bread is under weight, or exceeds in price, when no price or weight is fixed, and when the value neither of the corn nor labour is ascertained. No penalty where the assize is not set.

A. Conviction, and warrant to levy the penalty and distribute the bread to the poor; on 8 *An. c. 18.* and 1 *G. St. 2. c. 26.*

Westmorland. } To the constable of &c.

WHEREAS A. I. of — in the said county, yeoman, came this day before me J. P. esquire, one of his majesty's justices of the peace for the said county, and made information on oath, that A. O. of — aforesaid, yeoman, did this day expose to sale nine sixpenny loaves of bread deficient in their respective due weights, according to the assize of bread established by a statute made in the eighth year of the reign of her late majesty Queen Anne, and continued by several other subsequent statutes; And whereas I did forthwith go to the shop of the said A. O. in — aforesaid, and the said shop in the day time did enter, and there did find nine sixpenny loaves of wheaten bread, exposed to sale, and did cause the same to be severally weighed, and found the same to be severally deficient in their due weight one ounce each, according to the assize last settled in the said town of — pursuant to the said statute made in the eighth year of the reign of her late majesty Queen Anne: I do therefore hereby adjudge

the said A. O. to be guilty of the said offence in manner aforesaid, and that he hath forfeited the said nine sixpenny loaves for the use of the poor of the parish of ——— aforesaid, within which parish the said shop of the said A. O. is: And I do hereby command you to take the said nine loaves and distribute them amongst the said poor: And I do also adjudge, that by virtue of a statute made in the first year of the reign of his late majesty King George the first, the said A. O. hath by reason of his said offence incurred the forfeiture of 45s. to the use of the said A. I. These are therefore to command you forthwith to distrain the goods and chattels of him the said A. O. And if the said sum of 45s. shall not be paid in [seven] days time from the taking of the said distress, together with reasonable charges of taking and keeping the same, that then you do sell the said goods and chattels so distrained, and out of the money arising by such sale pay to the said A. I. the aforesaid sum of ——— rendring the overplus upon demand unto him the said A. O. the reasonable charges of taking, keeping, and selling the said distress being first deducted. And for so doing this shall be your sufficient warrant. Given under my hand and seal, at ——— in the said county, the ——— day of &c.

Breaking gaol. See Prison breaking.

Breaking open doors. See Arrest.

Brewers. See Excise.

Bribery.

BRIBERY in a strict sense is taken for a great misprision of one in a judicial place, taking any thing whatsoever, except meat and drink of small value, of any one who has to do before him any way, for doing his office, or by colour of his office, but of the king only; and is punishable at the common law by fine and imprisonment. 1 Haw. c. 67.

Bridges.

Bridges.

NOTE; This title treateth only of county bridges: Those which are under the cognizance of the surveyor of the highways, as being repaired by the several parishes or districts, are treated of under the title *Highways*.

I. Who shall repair.

II. Power of the leet to inquire thereof.

III. Power of the justices in sessions.

IV. Concerning the 300 foot at the ends of bridges.

V. Indictment of bridges.

VI. Charges of repairing.

VII. Surveyors of the work.

VIII. Manner of repairing.

IX. Purchasing lands adjoining.

X. Contracting for a term of years.

I. Who shall repair.

1. By the great charter, 9 H. 3. c. 15. *No town nor freeman shall be distrained to make bridges nor banks, but such as of old time and of right have been accustomed.*

2. And none can be compelled to make new bridges, where never any were before, but by act of parliament. *2 Inst. 701.*

3. By the common law, some persons (spiritual or temporal, corporate or not corporate) are bound to repair bridges by reason of the *tenure* of their lands or tenements; and some by reason of *prescription* only:

By *tenure*, by reason that they and those whose estate they have in the lands or tenements, are bound in respect thereof to repair the same. *2 Inst. 700.*

By reason of *prescription* only; but herein there is a diversity between bodies politick or corporate, spiritual or temporal, and natural persons: for bodies politick or corporate, spiritual or temporal, may be bound by usage and prescription only, because they are local, and have a succession perpetual; but a natural person cannot be bound by act of his ancestor, without a lien, or binding, and assets. *2 Inst. 700.*

And if a man make a bridge for the common good of all the subjects, he is not bound to repair it; for no particular man is bound to reparation of bridges by the common law, but by tenure or prescription. *2 Inst. 701.*

4. And if none are bounden by tenure or prescription at common law, then the whole county or franchise shall repair it. *2 Inst. 701.*

Concerning which, it is enacted by the 22 H. 8. c. 5. as follows: *Whereas in many places it cannot be known and proved, what hundred, town, parish, person, or body politick ought to repair bridges broken in the highways; in every such case, the said bridges, if they be without a city or town corporate, shall be made by the inhabitants of the county; if within a city or town corporate, then by the inhabitants of such city or town corporate; if part be in one shire, city, or town corporate, and part in another, or part within the limits of a city or town corporate, and part without, the inhabitants of the shires, cities or towns corporate, shall repair such part as lies within their limits.* S. 3.

Bridges broken in the highways] This extendeth only to common bridges in the king's highways, and not to private bridges to mills, or the like; the remedy in which case is not by indictment, but by action. 2 Inst. 701.

Within a city or town corporate] It hath been questioned, whether a borough which hath no bridge within its own limits, be not liable to contribute to the repairs of a county bridge. 1 Harw. 225.

5. A tenant at will of an house, which adjoins to a common bridge, is bound to repair the house, so that the publick be not prejudiced by the want of repair, altho' he be not bound to repair as to his landlord. L. Raym. 856.

6. The freehold of bridges is in him that hath the freehold of the soil; but the free passage is for all the king's liege people. 2 Inst. 705.

II. Power of the leet to inquire thereof.

Decays of bridges are presentable in the leet, or torn. 2 Inst. 701.

III. Power of the justices in sessions.

The justices, or four of them at the least (1 Q.) shall have power to inquire, hear, and determine in the general sessions, of all manner of annoyances of bridges broken in the highways, to the damage of the king's liege people, and to make such process and pains upon every presentment, against such as ought to be charged to make or amend them, as the king's bench usually doth, or as it shall seem by their discretions to be necessary and convenient, for the speedy amendment of such bridges. 22 H. 8. c. 5. f. 1.

Four of them at the least] If the bridge be within a franchise, which hath not four justices, and a sessions of its own, the justices of the county shall inquire: but if the franchise be a county of itself, and hath not four justices (1 Q.) it is not within this statute, but is left to the remedy which it had at common law. 2 Inst. 702.

And to make process] Where the bridge is in one shire, and the persons or lands which ought to be charged are in another shire;

or

or where the bridge is within a city or town corporate, and the persons or lands that ought to be charged are out of the said city; the justices of such shire, city, or town corporate, shall have power to hear and determine such annoyances, being within the limits of their commission: and if the annoyance be presented, then to make process into every shire of the realm, against such as ought to repair the same, and to do further in every behalf, as they might do, if the persons or lands chargeable were in the same shire, city, or town corporate where the annoyance is. 22 H. 8. c. 5. s. 5.

As the king's bench usually doth] The presentment at common law, might be before the king's bench, or at the assizes. 2 Inst. 701.

IV. Concerning the 300 foot at the ends of bridges.

Such part and portion of the highways, as well within franchise as without, as lie next adjoining to any ends of any bridges, distant from any of the said ends by the space of 300 foot, shall be made, repaired, and amended as often as need shall require; and the justices, or four of them (1 Q.) shall have power to inquire, hear, and determine, in the general sessions, all manner of annoyances of and in such highways, so being and lying next adjoining to any ends of bridges, distant from any one of the ends of such bridges 300 foot, and to do in every thing concerning the making, repairing, and amending of such highways, in as ample manner as they may do for the making, repairing, and amending of bridges. 22 H. 8. c. 5. s. 9.

V. Indictment of bridges.

1. No money shall be applied to the repair of bridges, until presentment be made by the grand jury at the assizes or sessions, of their insufficiency, inconveniency, or want of reparation. 12 G. 2. c. 29. s. 13.

2. An indictment for not repairing a bridge, ought to shew what sort of bridge it is, whether for carts and carriages, or for horses, or for footmen only. L. Raym. 1175.

3. If a man be indicted for that by reason of the tenure of certain lands he is bound to repair a bridge, it must be alledged where those lands lie. 2 H. H. 181.

4. Any particular inhabitant of a county, or tenant of land charged to the repairs of a bridge, may be made defendant to an indictment for not repairing it, and be liable to pay the whole fine assessed by the court, for the default of repairs, and shall be put to his remedy at law for a contribution from those, who are bound to bear a proportionable share in the charge; for the necessity of the case requires the greatest expedition in cases of this nature. 1 Haw. 221.

5. It hath been resolved, that it is not sufficient for the defendants to an indictment for not repairing a bridge, to excuse them-

selves, by shewing either that they are not bound to repair the whole, or any part of the bridge, without shewing what other person is bound to repair the same; and it is said, that in such case the whole charge shall be laid upon such defendants, by reason of their ill plea. 1 *Haw.* 221.

6. It seemeth, that no inhabitant of a county ought to be a juror, for the trial of an issue, whether the county be bound to such repairs or not; and therefore the jury must come from some adjacent county: but by the statute of 1 *An. st.* 1. c. 18. such inhabitant may be a good witness. 1 *Haw.* 222.

7. No fine, issue, penalty, or forfeiture, upon any presentment or indictment for not repairing bridges, or the highways at the ends of bridges, shall be returned into the exchequer, but shall be paid to the treasurer, to be applied towards the said repairs, and not otherwise. 1 *An. st.* 1. c. 18. s. 4.

8. And no presentment or indictment for not repairing bridges, or highways at the ends of bridges, shall be removed by certiorari out of the county into any other court. 1 *An. st.* 1. c. 18. s. 5.

But a certiorari lies to remove an order made by the justices, concerning the repair of a bridge, pursuant to a private act of parliament; and the justices ought to return the private act upon which their order is founded. *Dalt.* 504.

VI. Charges of repairing.

By the 12 *G.* 2. c. 29. The charges of repairing and amending bridges, and highways at the ends of bridges, shall be paid out of the general county rate. S. 1.

VII. Surveyors of the work.

The four justices in sessions as aforesaid may appoint two surveyors, with salaries, to see the bridges amended. 22 *H.* 8. c. 5. s. 4.

VIII. Manner of repairing.

It seemeth to be clear, that those who are bound to repair bridges, must make them of such height and strength, as shall be answerable to the course of the water, whether it continue in the old channel, or make a new one. 1 *Haw.* 221.

2. And persons are not trespassers, for entring on any adjoining land, for repairing bridges, or laying thereon the requisite materials. 1 *Haw.* 221.

IX. Purchasing lands adjoining.

The justices at their sessions may purchase any parcel of land, adjoining or near to any county bridge, for the more commodious enlarging, or convenient rebuilding the same, not exceeding one acre, to be paid for by the treasurer out of the county rates, by order under the hands and seals of the said justices in their said sessions; which lands

so purchased, shall be conveyed to such person or persons as the justices in the said sessions shall appoint, in trust, for enlarging or rebuilding the said bridges. 14 G. 2. c. 33.

X. Contracting for a term of years.

By the 12 G. 2. c. 29. s. 14. When any publick bridges, ramps, banks, or cops, are to be repaired at the expence of the county, the justices at their general or quarter sessions, after presentment made by the grand jury of their want of reparation, may contract with any person for rebuilding, repairing, and amending the same, for any term not exceeding seven years, at a certain annual sum.

In order to which they shall give publick notice of their intention of contracting with any person, for rebuilding, repairing, and amending the same.

And such contracts shall be made at the most reasonable price which shall be proposed by the contractors; who shall give sufficient security for the due performance thereof, to the clerk of the peace.

And all contracts when agreed to, and all orders relating thereto, shall be entred in a book to be kept by the clerk of the peace for that purpose; who shall keep the same amongst the records of the county, to be inspected by any of the justices at all seasonable times, and by any person employed by any parish or place contributing to the same, without fee.

Indictment for a bridge out of repair.

BY the oaths of ——— good and lawful men of the county aforesaid, then and there sworn and charged to inquire for our said Lord the King, and the body of the county aforesaid, it is presented, that a certain common bridge, over the river ——— commonly called ——— bridge, lying and being in the parish of ——— in the county aforesaid, in the king's common highway there, leading from the market town of ——— to the market town of ——— in the said county, altogether and from the time whereof the memory of man is not to the contrary, being a common king's highway for all the lieges and subjects of our said lord the king and of his ancestors, with their horses, carts, and carriages to go, pass, ride, and travel at their pleasure, on the ——— day of ——— in the ——— year of the reign of ——— was, and yet is in great decay, broken, and ruinous, so that the lieges and subjects of our said lord the king, upon and over the said bridge with their horses, carts, and carriages could not and cannot go, pass, ride, and travel, without great danger, to the grievous damage and nuisance of all the lieges and subjects of our said lord the king, upon and over the same bridge going, passing, riding, and travelling, and against the peace of our said lord the king, his crown and dignity.

And that A. O. late of ——— in the said county, gentleman, by reason of his tenure of certain lands lying in the parish of ——— aforesaid, and elsewhere in the said county, ought to make, repair, and amend the said common bridge, as often as and when it shall be necessary.

Buggery.

What it is.

1. **B**UGGERY (from the *Italian* *bugarone*, a buggerer, this vice being said to have been brought into *England* out of *Italy* by the *Lombards*) is a detestable and abominable sin, amongst christians not to be named, committed by carnal knowledge, against the ordinance of the creator, and order of nature, by mankind with mankind, or with brute beast, or by womankind with brute beast. 3 *Inst.* 58.

The punishment.

2. And by the statute of 25 *H.* 8. c. 6. Buggery committed with mankind or beast is made felony without benefit of clergy. And the justices of the peace may hear and determine the same, as in cases of other felonies.

Principal and accessory.

3. Which said statute making it felony generally, there may be accessaries both before and after. But those that are present, aiding and abetting, are all principals. And altho' none of the principals are admitted to their clergy, yet accessaries before and after are not excluded from clergy. 1 *H.* H. 670.

Infants.

4. If the party buggered be within the age of discretion (which is generally reckoned the age of 14), it is no felony in him, but in the agent only. But if buggery be committed upon a man of the age of discretion, it is felony in them both. 3 *Inst.* 59. 1 *H.* H. 670.

Navy.

5. By the articles of the navy (22 *G.* 2. c. 33.), if any person in the fleet shall commit the unnatural and detestable sin of buggery or sodomy, with man or beast; he shall be punished with death by the sentence of a court martial.

Pardon.

6. This crime is excepted out of the act of general pardon, 20 *G.* 2. c. 52. s. 17.

Bullion. See Coin.

Burglary.

Offences against the house of another, which fall short of burglary, belong to title **Larceny**, under the head **Larceny from the house**.

I. *What is burglary.*

II. *Reward for convicting a burglar.*

I. *What is burglary.*

Derivation of burglary.

1. **T**HE word *burglar* is derived of *burgh*, a house, and *laron*, a thief. 3 *Inst.* 63.

2. Burglary

2. Burglary is a felony at common law, in breaking and entering the mansion house of another, in the night, with intent to commit some felony within the same, whether the felonious intent be executed or not. Hale's Pl. 79. Definition of burglary.

—*Breaking*] Every entrance into the house by a trespasser, is not a breaking in this case; but there must be an actual breaking. As if the door of a mansion house stand open, and the thief enter, this is no breaking. So it is if the window of the house be open, and a thief with a hook or other engine draweth out some of the goods of the owner, this is no burglary, because there is no actual breaking of the house. But if the thief breaketh the glass of the window, and with a hook or other engine draweth out some of the goods of the owner, this is burglary, for there was an actual breaking of the house. 3 Inst. 64.

And Lord Hale says, these acts amount to an actual breaking; opening the casement, or breaking the glass window, picking open the lock of a door, or putting back the lock, or the leaf of a window, or unlatching the door that is only latched. 1 H. H. 552.

And by the statute of the 12 An. c. 7. If any person shall enter into the mansion house of another, by day or by night, without breaking the same, with an intent to commit felony, or being in such house shall commit any felony, and shall in the night time break the said house to get out, he shall be guilty of burglary, and ousted of the benefit of clergy, in the same manner as if he had broken and entered the house in the night time, with intent to commit felony.

—*And entering*] It is deemed an entry, when the thief breaketh the house, and his body, or any part thereof, as his foot, or his arm, is within any part of the house; or when he putteth a gun into a window which he hath broken, or into a hole of the house which he hath made, of intent to murder or kill; this is an entry and breaking of the house: but if he doth barely break the house, without any such entry at all, this is no burglary. 3 Inst. 64.

If divers come in the night to do a burglary, and one of them break and enter, the rest of them standing to watch, at a distance, this is burglary in all. 3 Inst. 64.

—*The mansion house*] This includes also churches, and the walls or gates of a walled town. 1 Harw. 103.

Mr. Hawkins says, all out-buildings, as barns, stables, dairy houses, adjoining to a house, are looked upon as part thereof; and consequently burglary may be committed in them: but if they be removed at any distance from the house, it seems that it hath not been usual of late to proceed against offences therein as burglaries. 1 Harw. 104.

And Lord Hale says more explicitly, the mansion house doth not only include the dwelling house, but also the out-houses that are parcel thereof, as barn, stable, cow house, dairy house, if they are parcel of the messuage, tho' they are not under the same roof, or joining contiguous to it; and so, he says, it was agreed by all the judges: but if they be no parcel of the messuage, as if a man take a lease of a dwelling house from one, and of a barn

Burglary.

from another; or if it be far remote from the dwelling house, and not so near to it as to be reasonably esteemed parcel thereof, as if it stand a bow-shot off from the house, and not within or near the curtilage of the chief house, then the breaking of it is not burglary, for it is not a mansion house, nor any part thereof.

1 *H. H.* 558, 9.

To break and enter a *shop*, not parcel of the mansion house, in which the shopkeeper never lodges, but only works or trades there in the day time, is not burglary, but only larceny; but if he, or his servant, usually or often lodge in the shop at night, it is then a mansion house, in which a burglary may be committed.

1 *H. H.* 557, 8.

It is not necessary, to make it burglary, that any person be actually in the house, at the very time of the offence committed.

1 *Haw.* 103.

In the night] As long as the day continues, whereby a man's countenance may be discerned, it is called day; and when darkness comes, and day light is past, so as by the light of day you cannot discern the countenance of a man, then it is called night.

3 *Inst.* 63.

And this doth aggravate the offence; since the night is the time wherein man is at rest, and wherein beasts run about seeking their prey. Hence in ancient records, the twilight was signified, when it was said, *inter canem & lupum* (between the dog and the wolf); for when the night begins, the dog sleeps, and the wolf seeketh his prey. 3 *Inst.* 63.

With intent to commit felony] There can be no burglary, but where the indictment both expressly alledges, and the verdict also finds, an intention to commit some felony; for if it appear, that the offender meant only to commit a trespass, as to beat the party, or the like, he is not guilty of burglary. 1 *Haw.* 105.

However, it seems the much better opinion, that an intention to commit a rape, or other such crime, which is made felony by statute, and was a trespass only at common law, will make a man guilty of burglary, as much as if such offence were a felony at common law; because where-ever a statute makes any offence felony, it incidentally gives it all the properties of a felony at common law. 1 *Haw.* 105.

Whether the felonious intent be executed or not] Thus they are burglars, who break any house, or church, in the night, altho' they take nothing away. And herein this offence differs from robbery, which requires that something be taken, tho' it is not material of what value.

Where a man commits burglary, and at the same time steals goods out of the house, it is also larceny; and if he be acquitted of the burglary, he may notwithstanding be indicted of the larceny; for they are several offences, tho' committed at the same time. And burglary may be, where there is no larceny; and larceny may be, where there is no burglary. 2 *H. H.* 246.

3. By the 18 *El. c.* 7. and 3 *W. c.* 9. Benefit of clergy is taken away in cases of burglary, both from the principal, and the accessory

accessary before; but in all cases of burglary, accessaries after must have their clergy. 2 H. H. 364. 1 Harw. 357, 8.

4. All burglaries and robberies of churches are excepted out of Pardon. the general pardon, of the 20 G. 2. c. 52.

II. Reward for convicting a burglar.

1. It may be observed, in the first place, that it is provided by the 24 H. 8. c. 5. that there shall be no forfeiture of lands or goods, for killing any person that attempts to commit burglary. Indemnity for killing him.

But besides this indulgence to a person killing such an offender in defence of his house, there are special advantages and rewards for apprehending and convicting him in due course of law; which are as follows:

2. By the 25 G. 2. c. 36. The charges of prosecuting and convicting a burglar, shall be paid by the treasurer of the county where the burglary was committed, on producing to him the order of the court for that purpose, which the clerk of assize, or of the peace, shall make out, for the fee of 1 s. 8. 11. Charges of convicting him to be reimbursed.

And also the charges of poor witnesses appearing on their recognizance, by the 27 G. 2. on paying 6 d. for the order: except in *Middlesex*, where the same shall be paid by the overseers of the poor where the person was apprehended.

3. Every person who shall apprehend any one guilty of burglary and prosecute him to conviction, shall have a certificate, without fee, under the hand of the judge, certifying such conviction, and within what parish or place the burglary was committed, and also that such burglar was discovered and taken, or discovered or taken, by the person so discovering or apprehending; and if any dispute arise between several persons so discovering or apprehending, the judge shall appoint the certificate into so many shares to be divided among the persons concerned, as to him shall seem just and reasonable. Exemption from parish offices for taking and convicting him.

And if any person shall happen to be slain by such burglar, in endeavouring to apprehend him, the executors or administrators of such person slain shall have the like certificate:

Which certificate shall be inrolled by the clerk of the peace of the county in which it shall be granted; for which he shall have 1 s. and no more:

And the said certificate may be once assigned over; and the original proprietor, or the assignee of the same, shall by virtue thereof be discharged from all manner of parish and ward offices, within the parish or ward where the felony was committed. 10 G. 2. c. 23.

4. And moreover, as a further reward, every person who shall apprehend any person guilty of burglary, and prosecute him to conviction, shall have a certificate under the hand of the judge, without fee, to be made out and delivered before the end of the assizes, certifying the conviction, and in what parish the burglary was committed, and also that the burglar was taken by the person claiming the reward; and if any dispute shall happen to arise between the persons claiming, the judge shall by the said certificate appoint 40 l. for taking and convicting.

appoint the same to be paid amongst the parties claiming the same, in such share and proportion as to him seem just and reasonable:

And on tender of such certificate to the sheriff, and demand made, he shall pay to the person so intitled, the sum of 40*l.* without fee or deduction, within one month after such tender and demand; on pain of forfeiting double, with treble costs. 5 *An. c. 31.* 6 *G. c. 23. f. 10.*

40*l.* to the executors of a person killed.

5. And if any watchman, or any other person, be killed, in endeavouring to apprehend any such burglar, his executors or administrators shall have a certificate delivered under the hand and seal of the judge, or of the two next justices of the peace, of such person being so killed; which certificate they shall, on sufficient proof before them made, give without fee: whereupon, such executor or administrator shall be intitled to receive the like sum of 40*l.* in like manner. 5 *An. c. 31. f. 2.*

40*l.* and a pardon, for convicting two accomplices.

6. And moreover, if any person, being out of prison, shall commit any burglary, and afterwards discover two or more the like offenders, so as two or more be convicted; he shall have the like reward and allowance of 40*l.* and also all other advantages which are given to persons who shall apprehend and convict any the like offenders; and shall also have the king's pardon for all burglaries, robberies, and felonies (except murder and treason) by him committed before such discovery made; which pardon shall be likewise a good bar to an appeal. 5 *An. c. 31. f. 4.*

Sheriff how to be repaid.

7. And the sheriff, on producing the certificates, and receipts for the said rewards, may deduct the same on his accounts; and if he have not money in his hands; he shall be repaid out of the treasury, on certificate from the clerk of the pipe. 5 *An. c. 31. f. 3.*

Or instead of charging the same in his accounts, he may immediately apply to the commissioners of the treasury, who shall forthwith repay the same without fee. 3 *G. c. 15. f. 4.*

Burning.

Houseburning at the common law.

Maliciously and voluntarily burning the house of another, by night or by day, is felony at the common law. 1 *Haw. 105.*

Maliciously and voluntarily] For if it be done by mischance, or negligence, it is no felony. 3 *Inst. 67.*

Yet if a man maliciously intending only to burn one person's house, happens thereby to burn the house of another, it is certain that he may be indicted as having maliciously burned the house of that other; for where a felonious design against one man misseeth its aim, and takes effect upon another, it shall have the like construction as if it had been levelled against him who suffers by it. 1 *Haw. 106.*

Burning] Neither a bare intention to burn a house, nor even an actual attempt to do it by putting fire to a part of a house, will amount to felony, if no part of it be burned; but if any part of the house be burnt, the offender is guilty of felony, notwithstanding the fire afterwards be put out, or go out of it self. 1 *Haw.* 106.

The house] Not only a mansion house, and the principal parts thereof, but also any other house, and the out-buildings, as barns, and stables adjoining thereto; and also barns full of corn, whether they be adjoining to any house or not, are so far secured by law, that the malicious burning of them is felony at common law. 1 *Haw.* 105.

Of another] A person seised in fee, or but possessed for years, of a house standing by itself at a distance from all others, cannot commit felony in burning the same. Also it seems the much stronger opinion, that a man so seised or possessed of a house in a town, who burns his own with an intent to burn his neighbour's, but in the event burns his own only, is not guilty of felony: but however it is certainly an offence highly punishable, in regard of the malice thereof, and the great danger to the publick which attends it; and the offender may be severely fined, and imprisoned during the king's pleasure, and set on the pillory, and bound to his good behaviour during life. 1 *Haw.* 106.

2. By the statutes of 23 *H.* 8. c. 1. and 25 *H.* 8. c. 3. No person who shall be found guilty for wilful burning of any dwelling house, or barn wherein any corn shall be, nor persons abetting, procuring, helping, maintaining, or counselling the same, shall be admitted to the benefit of clergy. By statute:
Burning a
dwelling house
or corn barn.

There hath been much learned debate, how far these statutes, which are repealed by 1 *Ed.* 6. c. 12. are revived by 5 & 6 *Ed.* 6. c. 10. But as the same is enacted in effect by other subsequent statutes, it is now not very material.

By the 4 & 5 *P. & M.* c. 4. Every person who shall maliciously command, hire, or counsel any person, wilfully to burn any dwelling house, or any part thereof, or any barn then having corn or grain in the same, shall not have the benefit of his clergy.

But accessaries after shall have their clergy. 1 *H. H.* 573.

3. Whoever shall wilfully and of malice burn, or cause to be burned, or aid, procure, or consent to the burning of any barn, or stack of corn or grain, within any of the counties of *Cumberland, Northumberland, Westmorland, and Duresme*, shall be guilty of felony without benefit of clergy. And justices of the peace in sessions may hear and determine the same. 43 *El.* c. 13. Burning a barn
or stack of corn,
in the northern
counties.

4. If any person shall in the night time maliciously, unlawfully, and willingly burn, or cause to be burned or destroyed, any ricks or stacks of corn, hay, or grain, barns, or other houses or buildings, or kilns; he shall be guilty of felony, but without corruption of blood, or disinheritance of heirs: Burning in the
night stacks of
corn or hay,
barns, houses,
kilns.

And

Burning.

And the judges of assize, or three justices of the peace (1 Q.) may determine the same, so that the prosecution be within six months :

And the said justices, on request of the party injured, shall issue their warrant for apprehending all such persons as shall be suspected thereof, and take their examination :

And shall cause all others who to them shall seem likely to make discovery, to appear before them, and give information on oath ; yet so, as no person to be examined shall be proceeded against for any offence, concerning which he shall be examined as a witness, and shall upon his examination make a true discovery :

And if such witness, being duly summoned, shall refuse to appear, or to be examined, they may commit him to the common gaol, till he submit to be examined upon oath :

And they shall issue warrants for summoning jurors :

And if any person, being found guilty (in order to avoid judgment of death, or execution thereupon) shall make his election to be transported, the court shall cause judgment to be entered that he be transported to some of the plantations (to be mentioned in the judgment) for seven years ; and if he shall return before the expiration of the term, he shall suffer death as a felon, and as if no such election to be transported had been made by him. 22 & 23 C. 2. c. 7.

Burning by the
Black act.

5. By the 9 G. c. 22. commonly called the Black act, (which is inserted more at length under the title *Black act* ;) If any person shall set fire to any house, barn, or outhouse, or to any hovel, cock, mow, or stack of corn, straw, hay, or wood ; [And by the 10 G. 2. c. 32. f. 6. If any person shall wilfully and maliciously set on fire any mine, pit, or delph of coal or cannel coal ; which offence, by f. 4. of this act, is incorporated with the offences in the Black act] he shall be guilty of felony without benefit of clergy.

And the hundred shall be chargeable, as in cases of robbery, for the damages sustained (not exceeding 200*l*.)

And if any person shall apprehend, or cause to be convicted, any offender, and shall be killed, or wounded so as to lose an eye or the use of a limb in endeavouring to apprehend him ; on proof thereof made at the sessions, and on certificate thereof from thence, he shall be intitled to the sum of 50*l*. to be paid by the sheriff in 30 days, the same to be repaid to him out of the treasury.

Which said acts are temporary ; and by the last continuance are to be in force till Sep. 1. 1757 &c.

And by the 20 G. 2. c. 52. All offences of setting fire to any house, barn, or outhouse, or to any hovel, cock, mow, or stack of corn, straw, hay, or wood, are excepted out of the general pardon.

Houseburning
not bailable.

6. Such as be taken for houseburning feloniously done, are not bailable by justices of the peace. 3 Ed. 1. c. 15. 2 Inst. 189.

Burning a ship.

7. If any ship officer shall wilfully burn the ship to which he belongeth, or procure the same to be done, to the prejudice of the owner of the ship or goods, he shall be guilty of felony without benefit of clergy. 1 An. st. 2. c. 9.

And

And by the articles of the navy, 22 G. 2. c. 33. Every person who shall unlawfully burn or set fire to any magazine, or store of powder, or ship, boat, ketch, hoy, or vessel, or tackle or furniture thereunto belonging, not appertaining to an enemy or rebel, shall be punished with death, by the sentence of a court martial.

Art. 25.

8. If any person shall, by day or by night, in a riotous, open, tumultuous, or in a secret and clandestine manner, forcibly, or wrongfully and maliciously burn any wood, or springs of wood, or coppice wood, he shall be guilty of felony. 1 G. 1. 2. c. 48. 6 G. c. 16. Burning wood growing.

And any two justices, or the justices in sessions, may cause the offender to be apprehended, and hear, and determine, and adjudge the offence. 6 G. c. 16.

But if the offender is not known, then the person injured shall have satisfaction from the inhabitants of the parishes, towns, or places joining thereon, in the same manner as for dikes and hedges overthrown in the night, by the statute of 13 Ed. 1. c. 46. (which enacts, that if it cannot be known by the verdict of assize or jury who did the fact, the towns near adjoining shall be distrained to levy the hedge at their own cost, and to yield damages) unless the offender be by such parish, town, or place, convicted in six months. 6 G. c. 16.

9. If any person shall maliciously, willingly, and unlawfully, burn or cause to be burnt, any wain or cart laden with coals, or with any goods or merchandizes; or any heap of wood prepared, cut, or felled for making coals, billets, or talwood, he shall forfeit treble damages to the party grieved, to be recovered by action of trespass; and also 10 l. as a fine to the king. 37 H. 8. c. 6. Burning a laden cart, or fire wood.

10. If any servant, thro' negligence or carelessness, shall fire or cause to be fired any dwelling house, or out house or houses, and be thereof convicted on the oath of one witness before two justices, he shall forfeit 100 l. to the churchwardens of the parish where the fire shall happen, to be distributed by them to the sufferers, in such proportions as to them shall seem just; and if he do not pay the same immediately on demand of the churchwardens, the said justices shall commit him to some workhouse or house of correction for eighteen months, there to be kept to hard labour. 6 An. c. 31. Punishment of a servant carelessly firing a house.

11. By the commission of the peace, any justice may cause to come before him, all those who to any of the people concerning the firing of their houses have used threats, to find sufficient security for the peace or their good behaviour towards the king and his people; and if they shall refuse to find such security, may cause them to be safely kept in the king's prisons, until they shall find such security. Threatning to burn a house.

Burying in Woollen. See Woollen Manufacture.

Butchers.

Butchers.

Not to sell fat
cattle alive.

1. **N**O person, using the trade of a butcher, shall sell, offer, or expose to sale, by himself or any other, any fat oxen, steers, runts, kine, heifers, calves, sheep, or lambs alive; on pain of forfeiting double value, half to the king, and half to him that will sue. 15 C. 2. c. 8.

Conspiring to
raise the price of
victuals.

2. If any butchers shall conspire not to sell their victuals but at certain prices; every such person shall forfeit for the first offence 10 l. to the king, and if not paid in six days, he shall suffer twenty days imprisonment, and shall only have bread and water for his sustenance; for the second offence 20 l. in like manner, or the pillory; and for the third offence 40 l. or pillory, and the loss of an ear, and to be taken as a man infamous, and not to be credited in any matter of judgment. And the sessions or leet may determine the same. 2 & 3 Ed. 6. c. 15.

Not to kill in a
walled town.

3. No butcher shall slay any beast within any walled town, except *Carlisle* and *Berwick*; on pain of forfeiting for every ox 12 d. every cow and other beast 8 d. half to the king, and half to him that will sue. 4 H. 7. c. 3.

Selling unwhol-
some flesh.

4. A butcher that selleth swine's flesh meazled, or flesh dead of the murrain, shall for the first time be grievously amerced, the second time suffer judgment of the pillory, the third time be imprisoned and make fine, and the fourth time forswear the town. Ordinance for bakers. *Hawk. Stat. V. 1. p. 181.*

Not to kill or sell
on the Lord's
day.

5. If any butcher shall kill or sell any victual on the Lord's day, he shall forfeit 6 s. 8 d. one third to the informer, and two thirds to the poor, on conviction before one justice, on his own view, or confession, or oath of two witnesses, to be levied by the constable or churchwarden. 3 C. c. 1.

Not to water
hides.

6. No butcher shall water any hide, except in *June*, *July*, and *August*; on pain of 3 s. 4 d. for each offence. 1 J. c. 22. s. 2. One third to the king, one third to the informer, and one third to the town or lord of the liberty. S. 46.

And the sessions or leet may hear and determine the same. S. 50.

Or, any two justices, near the place, may (in three months after the offence committed) summon the party accused, and the witnesses; and upon the party's appearance, or contempt in not appearing, on proof of notice given, may examine the witnesses on oath, and give judgment, and issue warrants under their hands to levy the penalty by distress; and, if not redeemed in six days, the same to be sold. They may also mitigate the penalties, so as they reduce them not to less than a fourth part, over and above the costs and charges. And any person aggrieved may appeal to the next sessions, who may finally determine the same; and, in case of conviction, issue warrants for levying the penalties. 9 An. c. 11. s. 36.

Selling rotten
hides.

7. No butcher shall put to sale any hide putrified or rotten; on pain of 3 s. 4 d. for each offence, in like manner. 1 J. c. 22. s. 2.

8. No

8. No butcher shall be a tanner or currier; on pain of 6 s. 8 d. Exercising the trade of a tanner. a day, to be recovered and levied in like manner. 1 J. c. 22. f. 2, 25.

9. If any raw hide shall wilfully or negligently be gashed, in Cashing hides. the flaying thereof; or being gashed, be offered to sale by any butcher or other; the offender shall forfeit 2 s. 6 d. for such hide, and 1 s. for a calf skin; half to the poor, and half to the informer: To be levied by two justices in like manner. 9 An. c. 11. f. 11.

Butter and Cheese.

I. Concerning the packing, weight, and goodness of butter.

II. Concerning the licence of a person to buy and sell butter.

III. Concerning ingrassing and regrating of butter and cheese.

IV. Concerning the shipping of butter and cheese for London.

V. Exporting of butter and cheese.

VI. Importing of butter and cheese.

I. Concerning the packing, weight, and goodness of butter.

1. **E**VERY farmer and other person packing up butter for Weight of the sale, shall set upon every firkin and cask, when the same cask to be marked. is fully seasoned in water, a continuing visible mark of the just weight of the empty cask; on pain of forfeiting for every offence the sum of ten shillings for every hundred weight of butter otherwise packed, and so proportionably for a greater or lesser quantity; half to the churchwardens and overseers for the use of the poor, and half with double costs to him who shall sue for the same in sessions, by action of debt, indictment, information, or presentment. 13 & 14 C. 2. c. 26. f. 5, 6.

2. Also every potter shall set upon every pot which he shall Weight of a pot sell for packing up butter, the just weight of the pot when it is to be marked. burnt, together with the first letter of his christian name, and his surname at length; on pain of 1 s. And no person shall expose to sale any butter packed up in any pot not so marked, on pain of 2 s. for every such pot. To be recovered and applied in like manner. 13 & 14 C. 2. c. 26. f. 6.

Butter and Cheese.

Weight and
goodness.

3. Every kilderkin of butter shall contain 112 pounds, and every firkin 56 pounds neat, or above; every pound containing 16 ounces, besides the tare of the cask, of good and merchantable butter; and every pot of butter shall contain 14 pounds neat, or above, besides the weight of the pot;

And no butter which is old or corrupt shall be mixed or packed up with any butter which is new and sound;

Nor any whey butter shall be packed or mixed with any butter made of cream;

And every cask or pot of butter shall be of one sort and goodness;

And no butter shall be salted with any great salt, but shall be salted and saved with small salt; nor more salt shall be intermixed with it than shall be needful for its preservation;

On pain that every owner, farmer, or packer of butter, not putting up in each kilderkin, firkin, and pot, to be sold or exposed to sale, such quantities as aforesaid, or offending in false packing as aforesaid, for every offence shall forfeit the value of all the butter so false packed; and for every offence where any kilderkin, firkin, or pot shall be found to contain a lesser quantity of butter than as above, six times the value of every pound of butter that shall be wanting in such cask or pot; to be recovered and applied as aforesaid. 13 & 14 C. 2. c. 26. s. 2.

Owner to set his
name on the
cask.

4. And when the farmer or other person hath filled the cask with butter, he shall, besides the former mark of the weight of the cask, set also on the cask the first letter of his christian name, and his surname at length with an iron brand; on pain of forfeiting for every offence the sum of 10 s. for every hundred weight of butter otherwise packed, and for more or less proportionably; to be recovered and applied in like manner. 13 & 14 C. 2. c. 26. s. 5.

Cheesemonger to
deliver due quan-
tity and quality.

5. And every cheesemonger and other who shall sell any kilderkin, firkin, pot, or other cask of butter, shall deliver therein the full quantity and due quality; or shall be liable to make satisfaction, according to the price thereof. 13 & 14 C. 2. c. 26. s. 3.

Cheesemonger
shall not repack
butter.

6. And no cheesemonger or other person shall repack for sale, any butter, in any kilderkin, firkin, or other cask, or pot, on pain of forfeiting double value thereof; to be recovered and applied in like manner. 13 & 14 C. 2. c. 26. s. 4.

In what time
the prosecution
shall be.

7. The prosecution for the offences above, shall be commenced in four months after the sale of the butter. 13 & 14 C. 2. c. 26. s. 7.

Prosecution not
to be, if the
buyer hath ap-
proved it.

8. But provided nevertheless, that no seller of butter shall be charged with any of the said penalties, after the buyer hath bought the butter and approved it. 4 W. c. 7. s. 2.

Fraud after sale,
by the seller.

9. And for preventing any fraud in the seller, after the factor or buyer hath bought the butter, the said factor or buyer shall set his seal, or mark, or name upon it, or upon the cask; and if it shall be afterwards exchanged or opened, and the cask changed, or any bad butter mixed or packed up with good butter, or any other fraud be committed by the seller; and he be convicted thereof, before one justice, by oath of one witness, or confession,

he

he shall forfeit 20 s. for every firkin and offence, to be levied by the constable, by distress, and to be distributed by the justice, half to the churchwardens and overseers for the use of the poor, and half to the informer. 4 W. c. 7. s. 2.

But any person aggrieved may appeal to the sessions, giving 20 l. bond to the party, to pay costs (in a month after) if he is not relieved on his appeal. *Id.* s. 10.

II. Concerning the licence of a person to buy and sell butter.

No badger, lader, kidder, carrier, buyer or transporter of butter and cheese shall be licensed (A) thereunto, unless he be or have been a married man, and be an householder, and of the age of 30 years or upwards; and unless it be in open sessions of the county, where he hath dwelt for three years last past. 5 El. c. 12. s. 4. Licence.

And the licence to bear date of the day and place of the sessions; and to be signed and sealed by three justices there (1 Q.). S. 5.

And the court may take recognizance (B) that he shall not forestall nor ingross, nor do any thing contrary to the statute of 5 & 6 Ed. 6. c. 14. against regrating, ingrossing, and forestalling. S. 6.

The licence and recognizance to be written by the clerk of the peace or his deputy, and by no other person; for which he shall have, for the licence 12 d. for the recognizance 8 d. and for registering them 4 d. For which fee, he shall also enter the names and dwellings of the persons licensed, and a brief declaration of the licence, with the day, time, and place when granted, in a register book, which he shall have at every sessions. S. 6.

And the licence to continue but for a year, unless renewed. S. 4.

And every person taking any licence contrary hereto, shall forfeit to the king 5 l. and the licence to be void: The same to be recovered in sessions, by inquisition, presentment, bill, or information, and by examination of two witnesses. S. 5, 7.

But this shall not extend to prejudice the liberty of a city or town corporate, but that they may licence purveyors, for the provision thereof. S. 9.

Neither shall it extend to the inhabitants of the counties of *Westmorland, Cumberland, Lancaster, Chester, and York*; but that they may do as heretofore they have lawfully used to do. S. 10. But by a general clause in the 13 El. c. 25. s. 20. these counties seem now to be included; by which it is enacted, that no person whatsoever shall be admitted or licensed to be a buyer, badger, kidder, or carrier of butter and cheese, and such like kind of victual, otherwise than by 5 El. c. 12.

III. Concerning ingrossing and regrating of butter and cheese.

There is nothing relating to the *forestalling* of butter and cheese, different from the forestalling of other goods; which may be seen under the general title of forestalling. But as to ingrossing and regrating the same, it hath been enacted as followeth:

Not to be sold again, but by retail.

1. By the 3 & 4 *Ed. 6. c. 21.* No person shall buy to sell again, any butter or cheese, unless he sell the same again by retail in open shop, fair, or market (or victuallers in their houses), and not in gross; on pain of double value, half to the king, and half to him that will sue.

And the word *retail* shall be taken only where a weight of cheese (*viz.* 225 pounds, in some places 256, in others 336 pounds, *Dalt. c. 112.*) or a barrel of butter, or less quantity, and not above, shall be sold at any time to any person or persons.

Ingrossing.

2. And by the 5 & 6 *Ed. 6. c. 14.* Whosoever shall ingross or get into his hands any butter or cheese, to sell the same again, shall be deemed an ingrosser. *S. 3.*

Regrating.

3. But the buying of any butter or cheese, by any licensed badger, lader, kidder, or carrier, who shall sell or deliver in open fair or market, shall not be deemed regrating. *5 & 6 Ed. 6. c. 14. s. 7.*

Cheesemongers in London.

4. And nothing in these two acts shall extend to cheesemongers and tallowchandlers in *London* and *Westminster*, for what they shall sell for victualling of ships, or for what they shall sell in their shops or market, not exceeding four weighs of cheese, and four barrels of butter. *21 J. c. 22.*

Provided, that if the justices of the peace in any county, in their quarter sessions, shall declare that the said traders in butter and cheese shall forbear to buy any in such county for any time, and they do buy within that time, and sell the same by retail, they shall not have the benefit of this act. *Id.*

IV. Concerning the shipping of butter and cheese for London.

No undue preference.

1. Every warehousekeeper, weigher, searcher, or shipper of butter and cheese, shall receive all butter and cheese that shall be brought to him, for the *London* cheesemongers, and ship the same without undue preference; and shall have for his pains 2s. 6d. for every load: and if he shall make default, he shall, on conviction before one justice, on oath of one witness, or confession, forfeit for every firkin of butter 10s. and for every weigh of cheese 5s. half to the churchwardens and overseers for the use of the poor, and half to the informer, to be levied by the constable, by distress and sale. *4 W. c. 7. s. 4.*

Book of entry.

2. And he shall keep a book of entry of receiving and shipping the goods; on pain of 2s. 6d. for every firkin of butter, and weigh of cheese, to be levied and applied in like manner; and for want of distress, to be committed till paid. *4 W. c. 7. s. 5.*

Butter and Cheese.

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3. A master of a ship refusing to take in butter or cheese, before he is full laden (except it be a cheesemonger's own ship sent for his own goods), shall forfeit for every firkin of butter refused 5 s. and for every weigh of cheese 2 s. 6 d. to be levied and applied in like manner. 4 *W. c. 7. f. 6.* Master of a ship refusing to take in.

4. Person aggrieved by the determination of the justice, may appeal to the next sessions, giving 20 l. bond, with one or more sureties, to the party, to pay costs (within a month after) if he is not relieved on his appeal. 4 *W. c. 7. f. 10.* Appeal.

5. But this act shall not extend to any warehouse in *Cheshire* or *Lancashire*. 4 *W. c. 7. f. 9.* Exception.

V. Exporting of butter and cheese.

Butter and cheese may be exported custom free. 3 *W. c. 8.* Exportation.

VI. Importing of butter and cheese.

No butter or cheese shall be imported from *Ireland*. 32 *C. 2.* Importation.

Note; There are special directions in the act of 8 *G. c. 27.* concerning the selling of butter in the city of *York*, and in the act of the 17 *G. 2. c. 8.* concerning the same in *New Malton*; which are not general enough to be here inserted.

A. Licence of a badger of butter and cheese; on the 5 *El. c. 12.*

Westmorland. **A**T the general quarter sessions of the peace held at — in and for the said county, this — day of — in the — year of — We A. B. C. D. and E. F. esquires, justices of the peace for the said county (one whereof is of the Quorum) have licensed, and by these presents do license and admit B. B. of — in the said county, being upwards of thirty years of age, and being also a married man [or a widower], and an householder, and having been an inhabitant in the said county for three years last past, to be a common badger, lader, kidder, carrier, buyer and transporter of butter and cheese, for and during the space of one year from the date hereof; so as he do use and follow the said business, according to the true intent and meaning of the statutes in that case made and provided, against regraters, forestallers, and ingrossers, and not otherwise. Given under our hands and seals &c.

B. Condition of the recognizance; on the 5 *El. c. 12. f. 6.*

— That he shall not forestall, or ingross, or do any thing contrary to the true meaning of the statutes made against regraters, forestallers, and ingrossers, or any thing therein contained.

Buttons.

Foreign buttons.

1. **N**O person shall sell or offer to sale, or import, any foreign bone-lace, cut-work, imbroidery, fringe, band strings, buttons, or needle-work, made of thread and silk, or either of them, or any foreign buttons whatsoever; on pain that he who shall offer them to sale shall forfeit the same and 50*l.* and the importer shall forfeit the same and 100*l.* half to the king, and half to him that shall sue. 13 & 14 C. 2. c. 13. s. 2. 4 W. c. 10. s. 2.

And on complaint and information given to a justice of the peace, at times reasonable, he shall issue his warrant to the constable, to enter and search for such manufactures in the shops being open, or warehousfes, and dwelling houses of such persons as shall be suspected, and to seize the same. 13 & 14 C. 2. c. 13. s. 3. 4 W. c. 10. s. 2.

And *English* bone-lace, needlework, point, or cut-work, may be exported custom free. 11 & 12 W. c. 3. s. 15.

Cloth buttons.

2. By the 10 W. c. 2. No person shall make, sell, or set on, any buttons made of cloth, or made of wood only; on pain of 40*s.* a dozen, half to the king, and half to him that shall sue in any court of record.

And by the 8 An. c. 6. No taylor or other person shall make, sell, set on, use, or bind on any cloaths, any buttons or button holes, made of or used, or bound with serge, drugget, frize, camlet, or other stuffs of which cloaths are usually made; on pain of 5*l.* a dozen, half to the king, and half to him that shall sue in any court of record; or on complaint to two justices, they may summon witnesses, and levy the penalty, and return the overplus if any be; and if any person is aggrieved, he may appeal to the next sessions.

But by this act no power is given to make distress. The next that occurs, is the statute of 4 G. c. 7. which in the statutes at large is a loose, injudicious, and ungrammatical act, and by its garb may well enough seem to have been drawn up by the taylor or button makers; whereby it is enacted as follows:

No taylor or other person shall make, sell, set on, or bind on any cloaths, any buttons or button holes made of, or used, or bound with cloth, serge, drugget, frize, camlet, or any stuffs that cloaths are usually made of (velvet excepted); on pain of 40*s.* a dozen: To be determined by one justice where the offence shall be discovered, or the offender shall inhabit, on oath of one witness, in three months after the offence committed; and to be distributed (charges of conviction first deducted) half to the informer, and half to the poor of the parish or place where the offence shall be discovered: if not paid (being lawfully demanded) in 14 days after conviction, the justice shall issue his warrant to the constable where the offender dwells, or can be found, to levy it by distress and sale; and where no sufficient distress can be found, he shall be committed to the common gaol of the county or place where he shall

shall be found, to be kept to hard labour for three kalendar months. Persons aggrieved may appeal to the sessions, giving sufficient notice ; and the sessions may allow costs to the party aggrieved.

And taylors causing their apprentices or servants to make such cloaths, shall themselves be subject to the penalties.

And all such cloaths, made with such buttons and button holes, *exposed to sale*, shall be forfeited and seized, and recovered and disposed of as the other penalties.

And by the statute of the 7 G. 3. c. 12. No person shall *use or wear* on any cloaths (velvet excepted) any such buttons or button holes ; on pain of 40 s. a dozen, on conviction by confession or oath of one witness ; and any justice of the peace, where the offence shall be committed, or the offender shall inhabit, shall on complaint or information on oath, of any credible person, in one month after the offence, summon the party, and on his appearance or contempt, examine the matter, and on due proof by confession or oath of one witness convict the offender, and cause the forfeiture by his warrant to be levied by distress and sale : the said penalties to be half to him on whose oath the party shall be convicted, and half to the poor of the parish where the offence shall be committed. And persons aggrieved may appeal to the next quarter sessions, giving 8 days notice.

To him on whose oath the party shall be convicted] This is almost the only instance where a share of the penalty is given in express words, in a popular action, to the party on whose oath any person is convicted ; and the contrary doctrine seems generally to prevail in most cases, that the defendant shall not be condemned upon the sole testimony of the plaintiff swearing for his own interest : And it is certainly against the common law, that such a person should be a witness at all ; and therefore his right to give evidence in his own cause, and the power to convict the defendant upon that sole evidence, must depend on the express words of some statute.

Buying of titles.

I. *By the common law.*

II. *By statute.*

I. *By the common law.*

IT seemeth to be an high offence at common law, to buy or sell any doubtful title to lands known to be disputed, to the intent that the buyer may carry on the suit, which the seller doth not think it worth his while to do, and on that consideration sells his pretensions at an under rate ; and it seemeth not to be material, whether the title so sold be a good or bad one, or whether the seller were in possession or not, unless his possession were lawful and uncontested ; for all practices of this kind are by all

Buying of titles.

means to be discountenanced, as manifestly tending to oppression, by giving opportunities to great men to purchase the disputed titles of others, to the great grievance of the adverse parties; who may often be unable or discouraged to defend their titles against such powerful persons, which perhaps they might safely enough maintain against their proper adversary. 1 Haw. 261.

II. By statute.

1. By the statute of 13 Ed. 1. c. 49. No person of the king's house shall buy any title whilst the thing is in dispute; on pain of both the buyer and seller being punished at the king's pleasure.

2. And by 32 H. 8. c. 9. None shall buy any pretended right in any land, unless the seller hath taken the profit thereof one year before; on pain that the seller shall forfeit the land, and the buyer the value, half to the king, and half to him that shall sue within one year. S. 2, 6.

Pretended title] But he who is in lawful possession may purchase the pretended title of any others. 32 H. 8. c. 9. f. 4.

One year before] But no conveyance made by one who hath the uncontested possession, and undisputed absolute propriety of lands, is any way within the meaning of this statute. 1 Haw. 265.

3. And the offence of buying of titles may be laid in any county, at the pleasure of the informer. 31 El. c. 5. f. 4.

Callico. See Excise.

Cambrick.

Importation.

1. CAMBRICKS and French lawns may be imported, on the importer's making oath, that they are for exportation only, and that they are really the property of the importer or some other subject, and that no foreigner hath any interest therein, and also giving bond for payment of 5*l.* for each piece which shall not be exported within three years after entry. 18 G. 2. c. 36. f. 6.

Wearing it.

2. But no person shall wear any cambrick or French lawn; on pain of 5*l.* to the informer, on conviction by oath of one witness before one justice, who shall on information in six days after the offence committed, summon the party, and on his appearance or contempt proceed to examine the matter, and on due proof thereof made, either by confession, or oath of one witness, hear and determine the same, and cause the penalty to be levied by distress. The party aggrieved may appeal to the next sessions, giving six days notice. 18 G. 2. c. 36. f. 1.

3. And

3. And if any person shall *sell* or expose to sale any cambrick or *french* lawns, made or not made up, (except for exportation,) he shall forfeit 5*l.* in like manner. 18 G. 2. c. 36. f. 2. Selling it.

4. But if the wearer shall, on oath before a justice, discover the seller (if such sale was after *Jun.* 24. 1748) he shall be discharged, and the seller only shall be liable. 18 G. 2. c. 36. f. 3. Wearer discovering the seller.

21 G. 2. c. 26. f. 2.

And where such wearer shall be excused by discovering the vender, the penalty on the vender shall go to the person who informed against the wearer. 21 G. 2. c. 26. f. 3.

5. And any milliner or other person who shall for hire make up any cambrick or *french* lawn, for any wearing apparel, shall be liable to the penalties inflicted on the vender. 21 G. 2. c. 26. f. 5. Milliner making up.

6. And where an offender is a feme covert, living with her husband, the penalty shall be levied on the goods of the husband. 21 G. 2. c. 26. f. 4. Husband liable.

Candles. See Excise.

Capias. See Process.

Cards. See Stamps.

Carriers.

1. **B**Y the 3 W. c. 12. The justices in *Easter* sessions yearly, shall rate the prices of all land carriage of goods to be brought into any place within their jurisdiction, by any common waggoner or carrier; and shall certify the rates so made to the mayors and other chief officers of the several market towns within their jurisdiction, to be hung up in some publick place to which all persons may resort: And no such common waggoner or carrier shall take for carriage above the rates so set, on pain of 5*l.* by distress, by warrant of two justices where such waggoner or carrier shall reside, to the use of the party grieved. 8. 24. Rates for carriage.

And by 21 G. 2. c. 18. If any common waggoner or carrier shall demand and take any greater price for bringing goods to *London*, or to any place within the bills of mortality than is allowed and settled by the justices for the place from whence the same are brought for the carrying of goods from *London* to the said place; he shall forfeit 5*l.* to the party grieved, to be recovered as by the said act of the 3 W. or by distress and sale of his goods, by warrant from two justices of *Middlesex*, *Surrey*, *London*, or *Westminster*. S. 3.

And the clerk of the peace in the country shall, immediately after *Easter* sessions yearly, certify to the lord mayor of *London*, and to the respective clerks of the peace for *Middlesex*, *Surrey*, and *Westminster*, the rates made for the carriage of goods in their

respective counties and places; which certificate, or an attested copy thereof, signed by the officer to whom the same shall be transmitted, shall be sufficient evidence of the prices so set. *S. 3.*

And every common waggoner or carrier shall have his christian and surname and place of abode, in large or capital letters, placed upon some conspicuous part of his carriage, before he shall drive the same; on pain of 20*s.* to be levied and recovered as afore-said. *S. 4.*

Carrier travelling
on sundays.

2. No carrier with any horse or horses, nor waggon-man, carman, or wain-man, with their respective carriages, shall by themselves, or any other, travel on the Lord's day; on pain of 20*s.* on conviction in six months, before one justice (or mayor), on view, or confession, or oath of two witnesses, to be levied by the constable or churchwardens by distress and sale; to the use of the poor, except that the justice may reward the informer with any sum not exceeding a third part. *3 C. c. 1.*

Carrier imbezil-
ling goods.

3. It hath been holden, that a carrier imbezilling goods which he has received to carry to a certain place, is not guilty of felony, because there was not a felonious *taking*; but is liable only to a civil action. *1 Haw. 89, 90.*

Carrier opening
a pack.

4. But it hath been resolved, that if a carrier open a pack, and take out part of the goods, with intent to steal it, he may be guilty of felony; in which case it may be said, not only that such possession of a part distinct from the whole, was gained by wrong, and not delivered by the owner; but also that it was obtained basely, fraudulently, and clandestinely, in hopes to prevent its being discovered at all, or fixed upon any one when discovered. *1 Haw. 90.*

Carrier stealing
goods after
brought to the
place.

5. Also it seems clear, that if a carrier, after he has brought the goods to the place appointed, take them away again secretly, with intent to steal them, he is guilty of felony; because the possession, which he received from the owner, being determined, his second taking is in all respects the same, as if he were a mere stranger. *1 Haw. 90.*

Carrying to an-
other place.

6. Also hath been resolved, that if goods be delivered to a carrier, to be carried to a certain place, and he carries them to another place, and disposeth of them to his own use, that this is felony; because this declareth that his intention originally was not to take the goods, upon the agreement and contract of the party, but only with a design of stealing them. *Kelynge 82.*

Carrier robbed.

7. Where goods are delivered to a carrier, and he is robbed of them, he shall be charged, and answer for them, by reason of the hire: And this was at the common law, before the hundred was answerable over to him; because such robbery might be, by consent and combination, carried on in such a manner, that no proof could be had of it. *1 Salk. 143.*

How far it is ne-
cessary that the
carrier should
know what the
goods are.

8. One brought a box to a carrier, in which there was a great sum of money, and the carrier demanded of the owner what was in it; he answered, it was filled with silks and such like goods of a mean value; upon which the carrier took it, and was robbed; and it was resolved, that the carrier was liable to make it good. But if the carrier had told the owner, that it was a dangerous time,

time, and if there were money in it, he durst not take charge of it; and the owner had answered as before, this would have excused the carrier. *Read, Car.*

9. A delivery to the carrier's servant, is a delivery to the carrier; and if goods are delivered to a carrier's porter, and lost, an action will lie against the carrier. *Read, Car.*

Goods delivered to the carrier's servant.

10. Where goods are stolen from a carrier, he may prefer an indictment against the felon, as for his own goods; for tho' he has not the absolute property, yet he has such a possessory property, that he may maintain an action of trespass against any one who takes them from him, and so may indict a thief for taking them: and the indictment were good also, if it had been brought by the real owner. *Kelynge 39.*

Carrier may indict for goods stolen, as his own property.

11. And there is a special case, wherein it is said, that a man may commit larceny by stealing his own goods delivered to the carrier, with intent to make him answer for them; for the carrier had a special kind of property in the goods, in respect whereof, if a stranger had stolen them, he might have been indicted generally as having stolen the said carrier's goods, and the injury is altogether as great, and the fraud as base, where they are taken away by the very owner. *1 Harw. 94.*

Person stealing his own goods from the carrier.

Casual death. See Deodand.

Cattle.

So much of this title as concerns butchers in particular, may be seen under Title Butchers.

- I. *What number of cattle a man shall keep.*
- II. *Concerning the bringing of cattle into England.*
- III. *Buying and selling of cattle; and therein of drovers.*
- IV. *Stealing, killing, or maiming of cattle.*

I. *What number of cattle a man shall keep.*

1. **F**OR the encouragement of the breeding of cattle, every person who shall keep above sixscore sheep, above what is for his household, shall for every threescore sheep keep one milch cow, and bring up yearly for every sixscore sheep one calf; on pain of forfeiting 20 s. a month:

What proportion shall be observed.

And every person who shall keep above 20 oxen, runts, shrubs, steers, heifers, or kine, shall for every ten of them keep one milch cow yearly, and rear one calf for the space of one year (unless it die

die in the mean time) for every such two milch cows; on pain of forfeiting 20 s. a month:

These penalties to go, half to the king, and half to him who shall sue in the sessions or other court of record. 2 & 3 P. & M. c. 3. 7 J. c. 8.

None to have
above 2000
sheep.

2. And for the encouragement of tillage, and to prevent the ingrossing of farms into a few hands, no man shall keep above 2000 sheep, at sixscore to the hundred, over and above what is necessary for his household; except it be upon his own proper estate; on pain of 3 s. 4 d. for every sheep above that number, half to the king, and half to him that shall sue for the same in sessions:—lambs not to be accounted sheep, till the second midsummer after they are lambed. 25 H. 8. c. 13.

II. Concerning the bringing of cattle into England.

Cattle of the Isle
of Man.

1. Not above 600 cattle shall be imported from the isle of Man yearly; and to be landed at *Chester* and the members thereof only. 18 C. 2. c. 2.

Scotch cattle.

2. By the sixth article of the union, no *Scotch* cattle, carried in *England*, shall be liable to any other duties, than those to which the cattle of *England* are liable. 5 An. c. 8.

Irish cattle.

3. The importation of cattle from *Ireland*, and other places beyond sea, shall be a common nuisance. 18 C. 2. c. 2.

And if any shall be imported, any person may seize them, and keep them 48 hours; and if in that time, it be made appear to a justice, on the oath of two witnesses, that they were not imported from *Ireland*, nor from any other place beyond sea, then they shall be delivered on warrant of such justice; but in default of such proof and warrant, then to be forfeited. 18 C. 2. c. 2. 32 C. 2. c. 2.

And the seizer, within six days after the conviction and forfeiture, shall cause them to be killed; the hides and tallow he shall have himself, the rest shall go to the poor, to be distributed by the churchwardens and overseers. 32 C. 2. c. 2.

And the seizers, churchwardens, or overseers neglecting their duty herein, shall forfeit 40 s. for every one of the great cattle, and 10 s. for sheep and swine; half to the poor, and half to the informer, by warrant of one justice, by distress; for want of distress, commitment for three months. 32 C. 2. c. 2. f. 6.

And the ships bringing the same shall be forfeited, and any person may seize and sell them, half for the poor, and half for himself. 20 C. 2. c. 7.

And a justice of the peace may by warrant apprehend the seamen, and all others concerned, and commit them to gaol for three months. 20 C. 2. c. 7.

And if no seizure is made in the district where they are first imported, such place shall forfeit 100 l. to the use of the house of correction. 20 C. 2. c. 7.

And if the cattle come by collusion of officers, or otherwise, into any other than the first district, they may be seized there in the manner. 20 C. 2. c. 7.

And

And persons confederating to elude this act, shall incur a *praemunire*. 20 C. 2. c. 7.

And also, cattle once seized, and afterwards found in another district, may be resealed there. 32 C. 2. c. 2. f. 10.

And *English* cattle intermixed in a drove with *Irish* cattle, may be seized as *Irish*. 32 C. 2. c. 2. f. 11.

III. Buying and selling of cattle; and therein of drovers.

1. No person shall buy any ox, steer, ront, cow, heifer, or calf, and sell the same again alive, in the same market or fair; on pain of forfeiting double value, half to the king, and half to him who shall sue. 3 & 4 Ed. 6. c. 19. 13 C. c. 4. f. 7, 8.

2. And if any person shall buy any ox, ront, steer, cow, heifer, calf, sheep, lamb, goat, or kid living, and sell the same again alive, unless he keep and feed the same for five weeks; he shall forfeit double value, half to the king, and half to him that shall sue in any court of record: And also the justices in sessions may determine the same, by inquisition, presentment, bill, or information, and by examination of two witnesses, and make process thereupon as upon indictment; and make estreats for the king's moiety, and award execution of the other moiety for the complainant, by *fieri facias*, or *capias*, as the courts at *Westminster* may do. 5 & 6 Ed. 6. c. 14. f. 9, 10.

3. But nevertheless it shall be lawful to any person known for a common drover (being licensed as is hereafter directed) to buy cattle in any such counties, where drovers have been wont in times past accustomedly to buy cattle, at their free liberty and pleasure, and to sell the same at reasonable prices, in common fairs and markets, distant from the place where he bought the same 40 miles at the least (so that they be not bought by forestalling). 5 & 6 Ed. 6. c. 14. f. 16, 17.

4. And no drover of cattle shall be licensed (A), but in the sessions of the county where he dwells, and hath dwelt for 3 years last past; nor unless he be or have been a married man; and be a householder, and not a household servant or retainer to any person; and of the age of 30 years at the least. 5 El. c. 12. f. 4.

Which licence shall bear date of the day and place where the sessions shall be holden; and shall be signed and sealed by three justices present (1 Q.); on pain that every person who shall take any licence otherwise, shall forfeit 5 *l.* and the licence to be void. S. 5.

And the sessions may take bond and surety by recognizance (B), that they shall not forestall or ingross, or do any thing contrary to this act, and the above act of 5 & 6 Ed. 6. c. 14. Id. f. 6.

The licence to be written by the clerk of the peace, for which he shall have 12 *d.* and for the recognizance 8 *d.* and for registering the same 4 *d.* for which said fee, he shall keep a register book of the names and dwelling places of the persons licensed, with an entry

entry of the day, time, and place where the licence was granted; which book he shall have at the sessions. *Id.* f. 6.

And such licence shall be only of force for one year. *Id.* f. 4.

And the justices in sessions may hear and determine offences against this act, in the same manner as against the 5 & 6 Ed. 6. c. 14. in the last section. *Id.* f. 8.

But this act shall not extend to the inhabitants of the counties of *Westmorland, Cumberland, Lancaster, Chester, and York*; but that they may do as heretofore they have lawfully used to do. *Id.* f. 10.

But by a general clause in the 13 El. c. 25. f. 20. these counties seem also to be included; which enacteth, that no person shall be licensed to be a buyer of cattle, otherwise than by 5 El. c. 12.

Driving on
sundays.

5. By the 3 C. c. 1. No drover, with any cattle, shall travel on the lord's day; on pain of 20s. which may be levied by the constable or churchwarden, by warrant of one justice, on conviction on his view, or by confession, or the oath of two witnesses; one third to the informer, and two thirds to the poor.

IV. *Stealing, killing, or maiming of cattle.*

Killing or
wounding in the
night.

1. By the 22 & 23 C. 2. c. 7. If any person shall in the night time maliciously, unlawfully, and willingly *kill or destroy* any horses, sheep, or other cattle, he shall be guilty of felony; but without corruption of blood, or loss of dower: But to avoid judgment of death, or execution thereupon, he may chuse to be transported to some of the plantations, to be mentioned in the judgment, for 7 years.

And if any person shall in the night time maliciously, unlawfully, and willingly *maim, wound, or otherwise hurt* any horses, sheep, or other cattle, whereby the same shall not be killed or utterly destroyed; he shall forfeit treble damages, by action of trespass, or upon the case:

And three justices (1 Q.) may inquire by a jury and witnesses; and may issue warrants for summoning jurors, and for apprehending persons suspected, and take their examinations; and cause witnesses to come before them to give information on oath, so as no person to be examined shall be proceeded against, for any offence concerning which he is examined as a witness, and shall make a true discovery: and if such witness, being summoned, refuse to appear, they may commit him, till he submit to be examined on oath.

Stealing, or kill-
ing with intent
to steal; 10l.
reward.

2. And by the 14 G. 2. c. 6. and 15 G. 2. c. 34. If any person shall feloniously drive away, or in any other manner feloniously steal any ox, bull, cow, calf, steer, bullock, heifer, sheep, or lamb; or shall wilfully kill any ox, bull, cow, calf, steer, bullock, heifer, sheep, or lamb, with a felonious intent to steal the whole carcass, or any part thereof; or shall assist or aid in committing any such offence, he shall be guilty of felony without benefit of clergy.

And every person, who shall apprehend and prosecute to conviction any offender, shall have 10*l.* reward. In order to which, he shall have a certificate signed by the judge, before the end of the assizes, certifying the conviction, and where the offence was committed, and that such offender was apprehended and prosecuted by the person claiming the reward; and if there are several claimants, the judge shall in the said certificate direct what share shall be paid to each claimant. Which certificate being tendred to the sheriff, he shall within a month pay the same without deduction; on pain of forfeiting double, with treble costs. The same to be allowed in his accounts, or to be repaid to him out of the treasury.

3. And by the 9 G. c. 22. commonly called the Black act, Killing or wounding by the Black act. which is inserted at large under the title of that name, If any person shall unlawfully and maliciously kill, maim, or wound any cattle, he shall be guilty of felony without benefit of clergy; but without corruption of blood.

And the hundred shall be answerable for the damages, not exceeding 200*l.*

And if any person shall apprehend, or cause to be convicted, any offender, and shall be killed, or wounded so as to lose an eye or the use of any limb, in endeavouring to apprehend or secure him; on proof thereof at sessions, and on certificate thereof from thence, the sheriff shall within 30 days pay to the person intitled the sum of 50*l.* to be repaid to him out of the treasury.

A. A licence for a drover of cattle.

Westmorland. **A**T the general quarter sessions of the peace held at ——— for the county aforesaid, this ——— day of ——— We A. B. C. D. and E. F. esquires, justices of the peace for the said county (one whereof is of the Quorum) have licensed, and by these presents do license and admit G. H. of ——— in the said county, yeoman, being upwards of 30 years of age, and being also a married man, and an householder, and having been an inhabitant in the said county for three years last past, to be a common drover of cattle, for and during the space of one whole year from the date hereof; so as he do use and follow the said business, according to the laws in that behalf made. Given under our hands and seals the day and year first abovewritten.

B. Condition of the recognizance.

—— That he shall not forestall, or ingross, or do any thing contrary to the true meaning of the statutes made against regraters, forestallers, and ingrossers, or any thing therein contained.

Certiorari.

What things
may be certified
without a writ of
certiorari.

A Justice of the peace may deliver or send into the king's bench, an indictment found before him, or a recognizance of the peace taken by him, or a force recorded by him, without any *certiorari*. *Dalt. c. 195.*

Concerning which writ of *certiorari*, I will shew

I. In what cases it is grantable.

II. How to be granted and allowed.

III. The effect of it.

IV. The return of it.

I. In what cases it is grantable.

In cases where a
writ of error lies
not.

1. A *certiorari* lies in all judicial proceedings, in which a writ of error does not lie; and it is a consequence of all inferior jurisdictions erected by act of parliament to have their proceedings returnable in the king's bench. *L. Raym. 469, 580.*

Where not spe-
cially prohibited
by statute.

2. And therefore a *certiorari* lies to justices of the peace, even in such cases which they are impowered by statute finally to hear and determine; and the superintendency of the court of king's bench is not taken away without express words. *2 Haw. 286.*

After conviction.

3. But it seems agreed, that a *certiorari* shall never be granted to remove an indictment after a conviction, unless for some special cause; as where the judge below is doubtful what judgment to give. *2 Haw. 288.*

After issue
joined.

4. Also, it seems a good objection against the granting a *certiorari*, that issue is joined in the court below, and a *venire* awarded for the trial of it. *2 Haw. 288.*

Where the court
is bound of right
to grant it.

5. It hath been adjudged, that wherever a *certiorari* is by law grantable for an indictment, the court is bound of right to award it at the instance of the king, because every indictment is the suit of the king, and he has a prerogative of suing in what court he pleases. But it seems to be agreed, that it is left to the discretion of the court, either to grant or deny it at the prayer of the defendant. *2 Haw. 287.*

Not for heinous
crimes.

6. And it seems that the court will not ordinarily, at the prayer of the defendant, grant a *certiorari* for the removal of an indictment of perjury, or forgery, or other heinous misdemeanor; for such crimes deserve all possible discountenance, and the *certiorari* might delay, if not wholly discourage the prosecution. *2 Haw. 287.*

II. How to be granted and allowed.

How to be al-
lowed on indict-
ment or present-
ment.

1. On indictment or presentment: By the 5 *W. c. 11.* and 8 & 9 *W. c. 33.* it is enacted, that in term time, no writ of *certiorari*,

certiorari, at the prosecution of any party indicted, shall be granted out of the king's bench, to remove any indictment or presentment of trespass or misdemeanor, before trial had, from before the justices in sessions; unless such certiorari shall be awarded upon motion of counsel, and by rule of court made for the granting thereof.

But in the vacation, writs of certiorari may be granted by any justice of the king's bench, whose name shall be indorsed on the writ, and also the name of the person at whose instance it is granted.

And all the parties indicted, prosecuting such certiorari, shall before the allowance thereof, find two sufficient manucaptors, who shall enter into a recognizance before a justice of the king's bench (who shall indorse the same on the writ), or before a justice of the peace of the county or place, in the sum of 20l. with condition, at the return of the writ, to appear and plead to the said indictment or presentment, in the said court of king's bench, and at his own costs and charges to cause and procure the issue that shall be joined thereupon, or any plea relating thereunto, to be tried at the next assizes for the county wherein the indictment or presentment was found, after such certiorari shall be returned, or the next term if in London, Westminster, or Middlesex, unless the court shall appoint another time, and if so, then at such other time; and to give due notice of such trial, to the prosecutor or his clerk in court; and also that the party prosecuting the writ of certiorari, shall appear from day to day, in the said court of king's bench, and not depart until he shall be discharged by the court.

And the said recognizance shall be certified into the king's bench, with the certiorari and indictment, to be there filed, and the name of the prosecutor (if he shall be the party grieved), or some publick officer, shall be indorsed on the indictment.

And if the defendant prosecuting the writ of certiorari, be convicted of the offence for which he was indicted, then the court of king's bench shall give reasonable costs to the prosecutor, to be taxed according to the course of the said court, who shall for the recovery thereof, within ten days after demand and refusal of payment, on oath, have an attachment awarded; and the recognizance not to be discharged till the costs are paid.

But if the person procuring the certiorari, being the defendant, shall not, before allowance thereof, procure such manucaptors to be bound as aforesaid, the justices may proceed to the trial of the indictment in sessions, notwithstanding the writ of certiorari delivered.

At the prosecution of any party indicted] This extends only to certiorari's procured by persons indicted; from whence it follows, that those which are procured by the prosecutor of an indictment, remain as they were at common law. 2 Haw. 292.

To be tried at the next assizes] But the recognizance shall not be forfeited, unless the prosecutor give rules according to the course of the court. 2 Haw. 293.

Reasonable costs] The master of the crown office, in taxing the costs, ought only to consider those, which are subsequent to the certiorari. 2 Haw. 292.

May proceed to the trial] Nevertheless they must make a return to the certiorari, otherwise they will be in contempt to the court; for all writs must be obeyed, unless good cause be shewn to the contrary; and the proper way of shewing it, is to return it. 2 Haw. 292.

How to be allowed on an order or conviction.

2. On a conviction or order: By the 13 G. 2. c. 18. it is enacted, that no certiorari shall be granted, to remove any conviction, judgment, order, or other proceedings, before any justice of the peace, or quarter sessions, unless it be applied for in six calendar months after such proceedings had or made, and unless it be duly proved upon oath, that the party suing forth the same, hath given six days notice thereof in writing, to the justice or justices, or two of them (if so many there be), before whom such proceedings have been, to the end that such justices, or the parties therein concerned, may shew cause if they so think fit, against the issuing the certiorari.

And by 5 G. 2. c. 19. No such certiorari shall be allowed, to remove any such judgment or order, unless the party prosecuting the certiorari, before the allowance thereof, enter into a recognizance with sufficient sureties, before a justice of the county or place, or before the justices at sessions where such judgment or order shall have been given or made, or before a justice of the king's bench, in 50l. with condition to prosecute the same, at his own costs and charges with effect, without wilful delay, and to pay the party in whose favour the judgment or order was made, within a month after the same shall be confirmed, his full costs to be taxed according to the course of the court where such confirmation shall be. And if he shall not enter into such recognizance, or shall not perform the conditions, the justices may proceed and make such further order for the benefit of the party for whom the judgment shall be given, in such manner as if no certiorari had been granted.

The said recognizance to be certified into the king's bench, and there filed, with the certiorari and order or judgment removed thereby.

And if the order or judgment shall be confirmed by the court, the person intitled to the costs, for the recovery thereof, within ten days after demand made, upon oath of such demand and refusal of payment, shall have an attachment granted for the contempt; and the recognizance not to be discharged till the costs are paid, and the order complied with.

III. The effect of it.

Subsequent proceedings void.

1. After a certiorari is allowed by the inferior court, it makes all the subsequent proceedings on the record that is removed by it erroneous. 2 Haw. 293.

Except where the jury is sworn.

2. But it hath been adjudged, that if a certiorari for the removal of an indictment before justices of the peace be not delivered, before the jury be sworn for the trial of it, the justices may proceed. 2 Haw. 294.

And after judgment.

3. And the justices may set a fine to compleat their judgment, after a certiorari delivered. L. Raym. 1515.

4. A *certiorari* removes all things done between the teste and return. L. Raym. 835, 1305. Removes all after the teste of it.
5. A *certiorari* removes the record it self out of the inferior court; and therefore if it remove the record against a principal, the accessory cannot there be tried. 2 Haw. 325. Removes the record it self.
6. It hath been holden, that a *certiorari* for the removal of a recognizance for the good behaviour, or an appearance at sessions, will supersede the obligation of it: but this would be highly inconvenient, and the contrary seems to be supported by the better authority. 2 Haw. 292. How far it supercedes the obligation of a recognizance.
7. If a *superfedeas* come out of a superior court, to the justices, they ought to surcease, altho' the *superfedeas* be awarded against law; for they are not to dispute the command of a superior court, which is a warrant to them. Crom. 129. Case where it is awarded against law.

IV. The return of it.

1. Every return of a *certiorari* ought to be under seal. 2 Haw. 294. Return of the certiorari.
2. And altho' the *custos rotulorum* keep the records, yet must the justices, to whom it is directed, return the *certiorari*; and therefore if it is directed to the justices of the peace, and the clerk of the peace only return it, nothing is thereby removed. 2 Haw. 294.
3. The *certiorari* may be sometimes to remove and send up the record it self, and sometimes but only the tenor of the record (as the words therein be), and it must be obeyed accordingly. Dalt. c. 195. 2 Haw. 295.
4. A return was in paper, and for that reason held not good. 4 W. K. B. Nels. 178.
5. Upon a *certiorari* to remove an indictment of a riot, or forcible entry, or the like, the return must have these words, *as also to hear and determine divers felonies &c.* according to the commission; for if the return mentions only that they are justices of the peace, without such words, the return is insufficient. Dalt. c. 195.
6. If the person to whom a *certiorari* is directed, do make a false return, yet the court will not stay filing it on affidavit of its being false, except in publick cases, as in cases of commissioners of sewers, or for not repairing highways, or for some such special causes; because the remedy for a false return is either an action on the case at the suit of the party grieved, or an information at the suit of the king. Dalt. c. 195.
7. If the person to whom the *certiorari* is directed, do not make a return, then an *alias*, that is, a second writ; then a *pluries*, that is, a third writ, or *causam nobis significes*, shall be awarded, and then an attachment. Crom. 116.

Besides these general rules, in common to all *certioraries*, there are many times special directions about granting, and allowing or not allowing them, in particular cases, which are treated of under

their respective titles; such as highways, game, tithes, swearing, and many others.

The return of a *certiorari* may be thus:

First, On the backside of the writ indorse these or the like words:

The execution of this writ appears in a schedule to the same writ annexed.

And that schedule may be thus, on a piece of parchment by it self, and filed to the writ:

Westmorland } I Sir Philip Mulgrave, baronet, one of the keepers
of the peace and justices of our lord the king assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the same county committed, by virtue of this writ to me delivered, do under my seal certify unto his majesty in his court of king's bench, the indictment, of which mention is made in the said writ, together with all matters touching the same indictment. In witness whereof I the said Sir P. M. have to these presents set my seal. Given at ——— in the said county, the ——— day of ——— in the ——— year of the reign of ———.

Then take the record of the indictment, and close it within the schedule, and seal and send them up both together with the *certiorari*.

Challenge. See Juries.

Champerty. See Maintenance.

Chance medley. See Homicide.

Cheat.

1. **O**F cheats punishable by publick prosecution, there are two kinds; by the common law, and by statute.

2. Those which are punishable at the common law, may in general be described to be deceitful practices, in defrauding or endeavouring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty; as by playing with false dice; or by causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written; or by persuading a woman to execute writings to another, as her trustee, upon an intended marriage, which in truth contained no such thing, but only a warrant of attorney to confess a judgment; or by suppressing a will; and such like. 1 Haw. 188.

3. It seemeth to be the better opinion, that the deceitful receiving of money from one man, to another's use, upon a false pretence

of having a message and order to that purpose, is not punishable by a criminal prosecution, because it is accompanied with no manner of artful contrivance, but wholly depends on a bare naked lie; and it is said to be needless to provide severe laws for such mischiefs, against which, common prudence and caution may be a sufficient security. 1 *Haw.* 188.

4. A person for a counterfeit pass, was adjudged to the pillory and fined. *Dalt. c. 32.*

5. On an indictment against the defendant, a miller, for changing corn delivered to him to be ground, and giving bad corn instead of it, it was moved to quash the same, because it is only a private cheat, and not of a publick nature. It was answered, that being a cheat in the way of trade, it concerned the publick, and therefore was indictable. And the court unanimously agreed not to quash it. *T. 16 G. 2. K. and Wood. Sess. C. V. 1. 217.*

6. A person falsely pretending that he had power to discharge soldiers, took money of a soldier to discharge him; and being indicted for the same, the court held the indictment to be good. *T. 3 C. Serlestead's case, 1 Latch 202.*

7. As there are frauds which may be relieved civilly, and not punished criminally (with the complaints whereof the courts of equity do generally abound); so there are other frauds, which in a special case may not be helped civilly, and yet shall be punished criminally: Thus if a minor goes about the town, and pretending to be of age, defrauds many persons by taking credit for considerable quantities of goods, and then insisting on his non-age; the persons injured cannot recover the value of their goods, but they may indict and punish him for a common cheat. *Barl. 100.*

8. Offences of this kind by statute, depend upon the 33 H. 8. c. 1. by which it is enacted, that if any person shall falsely and deceitfully obtain, or get into his hands or possession, any money, goods, cattels, jewels, or other things, of any person, by colour and means of any false privy token, or counterfeit letter made in another man's name; and shall be convicted thereof, by examination of witnesses, or confession, at the assizes or sessions, or by action in any court of record; he shall have such punishment by imprisonment, pillory, or other corporal pain (except death) as the court shall appoint. Saving to the party grieved such remedy by action or otherwise, for the goods so obtained, as he might have had by the common law.

And two justices (1 Q.) may call and convent by process or otherwise (A), to the assizes or sessions, any person suspected, and commit or bail him to the next assizes or sessions.

Get into his hands or possession] A person endeavouring by a counterfeit letter to defraud another of goods, and being apprehended on suspicion of such fraud, before he hath got the goods into his possession, seems not to be within this statute. *E. 3 G. 2. K. and Brian, Sess. C. V. 2. 27.*

False privy token] On motion to quash an indictment, which was, that the defendant came pretending that such a person had sent him to receive 20*l.* and received it, whereas such person did not send him: By the court, It is not indictable unless he

came with *false tokens*; for we are not to indict one man for making a fool of another. *Black. 79.*

H. 13 G. 2. K. and Numes. It was adjudged, that an indictment averring the offence to be by false tokens, without shewing what those false tokens are, is not sufficient; and that the fraudulently procuring a note from a person, by falsely affirming that there was one in the next room that would pay the money due upon it, whereas in fact there was no such person in the next room, is not a *false token*, but a false affirmation only. *Sess. C. V. 2. 201.*

Note; The statute says a false *privy* token.

Corporal pain] Lord Coke observes hereupon, that for this offence the offender cannot be fined, but corporal pain only inflicted. *3 Inst. 133.*

But Mr. *Hawkins* observes, that there is a precedent in *Cro. Car. 564.* by which it appears, that one convicted on such a prosecution hath been adjudged not only to stand on the pillory, but also to pay a fine of 500*l.* and to be bound with good sureties to the good behaviour. *1 Haw. 188.*

Commit or bail him] In this case the justices shall do well to take examination of the offence, and to certify the same to the sessions or gaol delivery, and withal to bind over the informers and witnesses to give evidence therein. *Dalt. c. 32.*

A. Warrant of two justices to apprehend an offender; on 33 *H. 8. c. 1.*

Westmorland. } To the constable of _____

WHEREAS complaint hath been made unto us whose names and seals are hereunto set, two of his majesty's justices of the peace for the said county, and one of us of the Quorum, upon the oaths of A. I. of _____ yeoman, and B. I. of _____ yeoman, that on the _____ day of _____ A. O. of _____ yeoman, did by a false *privy* token [or, counterfeit letter] that is to say, by [here particularize the offence] falsely and deceitfully obtain and get into his hands and possession [here mention the things] from C. I. of _____ contrary to the statute in that case made: These are therefore to command you, upon sight hereof, forthwith to bring the said A. O. before us at _____ on the _____ day of _____ to answer to the said complaint, and farther to be dealt withal according to law. Given under our hands and seals the _____ day of _____.

Cheese. See Butter.

Chocolate. See Exercise.

Church

Church and Church Ward.

1. **I**N cities and towns corporate, the bishop (with the consent of the mayor, aldermen, and justices of the peace, and of the patron) may unite two churches or chapels; and make order, with the like consent, that the patrons present by turns, having regard to the value of the livings united; and the incumbents thereof shall be graduates. 17 C. 2. c. 3. Uniting of churches.

2. Clauses are commonly inserted in the several acts of parliament for making provision for the rectors of new churches, which clauses give certain powers to justices of the peace, in relation to the assessments to be made for that purpose. New churches.

3. No fairs nor markets shall be kept in church yards. 13 Ed. 1. ft. 2. c. 6. Markets in the church yard.

4. Clergymen shall not be arrested, and drawn out of any church or church yard, whilst they attend to divine service; on pain of imprisonment of the offender, and ransom at the king's will, and satisfaction to the party arrested. 50 Ed. 3. c. 5. 1 R. 2. c. 15. Arrest in the church or church yard.

Also it is said, that arrests in civil cases ought not to be of persons going to or coming from church; but that a warrant from a justice of the peace for the king may be executed in such case. Cro. Car. 602. Cro. Ja. 321. 2 Bulstr. 72.

But altho' the officer may be punished for the same either in the spiritual or temporal courts, yet the arrest (if not on a Sunday) is good in law. Watson 636.

5. If any person shall, by words only, quarrel, chide, or brawl, in any church or church yard, the bishop (on proof of two witnesses) may suspend every layman, being an offender, ab ingressu ecclesie; and every clergyman from the ministration of his office, so long as he shall think meet. 5 & 6 Ed. 6. c. 4. f. 1. Brawling in the church or church yard.

6. If any shall smite, or lay any violent hands on another in any church or church yard, he shall be deemed ipso facto excommunicate, and be excluded from the fellowship and company of Christ's congregation. 5 & 6 Ed. 6. c. 4. f. 2. Striking in the church or church yard.

Lay any violent hands] But churchwardens, or perhaps private persons, who whip boys for playing in the church, or pull off the hats of those who obstinately refuse to take them off themselves, or gently lay their hands on those who disturb the performance of any part of divine service, and turn them out of the church, are not within the meaning of this statute. 1 Harw. 139.

Shall be deemed ipso facto excommunicate] And he shall not excuse himself by shewing that the other assaulted him. 1 Harw. 139.

Ipsa facto] Nevertheless, in this and other like cases, there ought either to be a precedent conviction at law, which must be transmitted to the bishop; or else the excommunication must be declared in the spiritual court upon a proper proof of the offence there; for it is implied in every penal law, that no one shall incur

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the penalty thereof, till he be found guilty upon a lawful trial.

1 Haw. 139.

Striking with a
weapon in the
church or church
yard.

7. If any shall maliciously strike another with any weapon, in any church or church yard, or shall there draw any weapon with intent to strike, and shall be convicted thereof by verdict of 12 men, or confession, or by two witnesses, before the judges of assize, or justices of the peace in their sessions, he shall be adjudged to have one of his ears cut off; and if he have no ears, he shall be burned in the cheek with an hot iron having the letter F, whereby he may be known and taken for a fray maker and fighter; and he shall also stand ipso facto excommunicate. 5 & 6 Ed. 6. c. 4. f. 3.

Sacrilege.

8. He who steals goods belonging to a parish church, may be indicted for stealing the goods of the parishioners. 1 Haw. 94.

For other matters, see title Churchwardens.

Churchwardens.

- I. Who are exempted from being churchwardens.
- II. Chusing and swearing of churchwardens, with their duty thereupon.
- III. Their duty in levying rates; and therein of vestries, and select vestries.
- IV. Their duty as to repairs; and therein concerning church seats.
- V. Their duty as to sundry other matters.
- VI. Concerning presentments; and therein of sidesmen or assistants.
- VII. Their accounting.
- VIII. Their punishment on misbehaviour.
- IX. Their indemnity on doing their duty.

I. Who are exempted from being churchwardens.

Attorneys.

1. A Counsellor, or attorney, ought not to be chosen churchwarden; and if he is, he may have a prohibition, by reason of his attendance on the courts at Westminster. 2 Roll's Abr. 272.

Apothecaries.

2. Apothecaries, who have served 7 years, shall be exempted from the office of churchwarden. 6 W. c. 4.

Dissenting ministers.

3. Dissenting teachers or preachers, in holy orders or pretended holy orders, being duly qualified, are exempted from the office of churchwarden. 1 W. Sess. 1. c. 18.

4. Other

4. Other dissenters, scrupling to take upon them the office, Other dissenters. may execute the same by a sufficient deputy, to be approved of in like manner as other churchwardens. *1 W. Sess. 1. c. 18.*

5. All persons who have prosecuted a felon to conviction, are Person having convicted a felon. exempted from the office of churchwarden, in the parish where the offence was committed. *10 & 11 W. c. 23. s. 2.*

II. Chusing and swearing churchwardens; with their duty thereupon.

1. Churchwardens shall be chosen yearly in *Easter* week, by the joint consent of the minister and parishioners, if it may be; but if they cannot agree, the minister shall chuse one, and the parishioners another. *Can. 89.* When to be chosen, and by whom.

But where there is a custom for the parishioners to chuse both, that custom shall continue. *Cod. 242.*

2. A person chosen churchwarden, refusing to take his office and oath, may be excommunicated for the refusal; and no prohibition will lie. *Cod. 243.* Refusing to take the office.

3. And the ecclesiastical judge, refusing to swear him, may be compelled by a *mandamus*. *Cod. 243.* Refusing to swear them.

4. The churchwardens oath, as said to have been agreed on, upon mutual consultation between the civilians and common lawyers, is as follows; Churchwardens oath.

“ You shall swear truly and faithfully to execute the office of a churchwarden within your parish, and according to the best of your skill and knowledge present such things and persons as to your knowledge are presentable by the laws ecclesiastical of this realm: So help you God and the contents of this book.” *Cod. 243.*

5. Churchwardens being thus sworn, are so far incorporated by law, as to sue for the goods of the church, and to bring an action of trespass for them; and also to purchase goods for the use of the parish; but they are not a corporation in such sort as to purchase lands, or take by grant, except in *London* by custom. *Cod. 241.* Churchwardens a body corporate.

6. Churchwardens shall continue in office, till the new churchwardens be sworn. *Can. 118.* How long they shall continue.

III. Their duty in levying rates; and therein of vestries, and select vestries.

1. The rates must be made with the consent of the major part of the parishioners, housekeepers, or occupiers of land. In order to which, publick notice of a vestry (a place so called from the vestments of the minister kept there) ought to be given the *Sunday* before, either in the church after divine service is ended, or else at the church door as the parishioners come out; both of the calling of the said meeting, and also of the time and place of the assembling of it. And it will be fairest then also to declare for what business the said meeting is to be held, that no one may be surprized, but that all may have full time before, to consider of what

what is to be proposed at the said meeting. And it is usual that for half an hour before it begins, one of the church bells be tolled to give the parishioners notice when they are met. *5 Co. 67. Par. L. 54.*

Who shall have a vote in the vestry.

2. At the common law, every parishioner who paid to the church rates, and no other, had a right to vote. *Par. L. 56.* And those that pay no church rates shall have no vote in affairs relating to it, except it be the rector or vicar. *Wood 155.*

Laying the rates.

3. When the churchwardens and parishioners are there met, they are to consider what sum of money will be necessary to raise for such repairs as shall be then needful; and after they have agreed what sum is fit, they are to make an equal levy. *Degge 171.*

Majority to bind the parish.

4. And the major part of them that appear, shall bind the parish; or if none appear, the churchwardens alone may make the rate; because they, and not the parishioners, are to be cited and punished, in defect of repairs. *Cod. 220.*

Entring in a book.

5. It is most convenient, that every parish act there be entred in the parish book of accounts, and every man's hand consenting to it be set thereto; for then it will be a certain rule for the churchwardens to go by. *Par. L. 55.*

Select vestry.

6. By custom there may be select vestries, of a certain number of persons elected yearly, to make rates, and manage the concerns of the parish for that year: and such custom is a good custom. *Read. Ch. Service. Cod. 246.*

Two rates; one for the fabrick, another for ornaments.

7. It is holden, that a rate for the reparation of the fabrick of a church is real, charging the land, and not the person; but a rate for ornaments is personal, upon the goods, and not upon the land. *Cod. 220.*

And in *Jeffrey's case*, *5 Co. 67.* it was solemnly adjudged, that the rates for the repair of the church shall be laid upon every occupier of lands in the parish, altho' such occupier live in another parish; and such person may come to the vestries of the parishioners, and vote in the making a rate: but he shall not be charged towards the ornaments of the church, as for bells, repair of seats, bread and wine, clerk's wages, visitation charges, and the like, by reason of such lands; for that the personal estates of the inhabitants are chargeable with every thing that doth not relate to the fabrick of the church, or repairs of the fences of the church yard, or such other things as concern the freehold.

And therefore some have been of opinion, that churchwardens should make two rates; one upon lands and houses, which may concern the freehold of the church, and another upon personal estates and stock, to defray other expences. But as this method creates confusion, so it is seldom practised. *2 Roll's Abr. 252, 270, 291.*

And Sir *Simon Degge* says, that he conceives the law to be clear otherwise; and that a foreigner who holds lands in the parish is as much obliged to pay towards the bells, seats, and ornaments, as to the repair of the church; otherwise there would be great confusion in making several levies, which he never observed

to be practised within his knowledge. But he leaves it a *quarry*, among a diversity of opinions. *P. 173.*

And Mr. *Shaw*, in his parish law, having cited the authors who hold these different opinions, says, that the practice generally now goes according to the opinion last mentioned, namely, that foreigners occupying lands within the parish shall be charged to both; and that the ecclesiastical judges, as well as the temporal, for the ease and convenience which accrues from the making of one levy for all, do give countenance hereto, and begin to treat the contrary opinion as obsolete and out of doors. *P. 92.*

8. A taxation by the pound rent is the most equitable way, and not according to the quantity of the land. *Wood 156.* Equal pound rate.

9. Where lands are in farm, not the lessor, but the tenant shall be rated and pay. *Cod. 221.* Tenant to be charged, and not the landlord.

10. An impropriator, tho' bound to repair the chancel, is also bound to contribute to the reparations of the church, if he hath lands in the parish, which are not parcel of the parsonage. *Cod. 221, 223.* Impropriator how far chargeable.

11. If any person find himself aggrieved at the inequality of the assessment, his appeal must be to the ecclesiastical judge. *Degge 172.* Appeal against the rates.

And in such case, if he will be relieved, he must shew, that he is illegally or unequally taxed in respect of the quantity of his land, as being rated for more than he has, or that the land which he hath is over rated, or that the rate was needless, or that some lands in the parish are omitted in the rate. *Wood 155.*

12. If any refuse to pay the rates, being demanded by the churchwardens, they are to be sued for in the ecclesiastical courts, and not elsewhere. *Cod. 219. Degge 171.* Rate how to be recovered.

Also a quaker, refusing to pay church rates, may be sued, as other parishioners, in the ecclesiastical court; or he may be prosecuted before the justices of the peace, in the same manner as for his tithes.

IV. Their duty as to repairs; and therein concerning church seats.

1. Of common right, the soil and freehold of the church is the parson's; the use of the body of the church, and the repair of it, common to the parishioners; and the disposing of the seats therein, the right of the ordinary. *Cod. 221.* Who shall repair.

2. The spiritual court may compel the parishioners to repair the body of the church, and may excommunicate every one of them till it be repaired; but those that are willing to contribute shall be absolved, till the greater part agree to a tax. *Read. Ch. Service.* Who may compel the repairs to be made.

3. If the churchwardens erect or add any thing new, either to the fabrick of the church, utensils, or church yard, they must have the consent of the parishioners; and if such additions are in the church, the bishop's licence is also necessary. But where necessary repairs are wanting, the greater part of the parish will bind

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bind the less; and if the major part will not consent, where repairs are necessary, the churchwardens may repair without their consent, if upon notice given they refuse to meet, or when they are met, refuse to make a rate. But if a church fall down, the parishioners are not bound to rebuild it. *Read. Ch. Service, 1 Ventr. 367.*

Majority may rebuild.

4. But if a church be so much out of repair, that it is necessary to pull it down, or so little, that it needs to be enlarged, the major part of the parishioners may make a rate for new building, or enlarging, as there shall be occasion. This was declared in the 29 C. 2. by all the three courts successively; notwithstanding the cause was laboured by a great number of quakers, who opposed the rate. *Cod. 221.*

Repairing the chancel.

5. The parson, that is, the spiritual rector, as also the lay impropriator, are bound by common right to repair the chancel, and is thereupon intitled to the chief seat therein, unless another hath it by prescription; yet he hath not the disposal of the seats therein, but the bishop. *Cod. 223, 224.*

Repairing an ile.

6. An ile in a church, which hath time out of mind belonged to a particular house, and been maintained and repaired by the owner of that house, is part of his frank tenement, and the ordinary cannot dispose of it, or intermeddle in it. *Cod. 221.*

Seat inseparable from the house.

7. A seat, or priority in a seat, in the body of the church, may be prescribed for as belonging to a house, if it hath been used, and also repaired, time out of mind, by the inhabitants of such house. *Cod. 221.*

And no one can claim a seat in a church by prescription, as appendant or belonging to land; but it must be laid as belonging to a house, in respect of the inhabitancy thereof. *Wood 153.*

And therefore a seat may not be granted to a person and his heirs absolutely; for the seat doth not belong to the person, but to the inhabitant. *Cod. 221.*

V. Their duty as to sundry other matters.

Overseer.

1. Every churchwarden is an overseer of the poor, altho' every overseer of the poor is not a churchwarden. *43 El. c. 2. s. 1.*

And in *M. 15 C. 2.* A churchwarden was committed by the two next justices, as churchwarden, for refusing to account for the money received and disbursed by him; but on an *habeas corpus* he was discharged: because by the warrant of commitment it ought to appear that he was overseer of the poor, for by the statute of *43 El.* that is annexed to his office of churchwarden, and the justices have no jurisdiction over him as churchwarden, but as overseer. *Dalt. 186.*

Church way.

2. They are to see that the church ways be well kept and repaired. And the right to a church way may be claimed and maintained by a libel in the spiritual court. *2 Roll's Abr. 287.*

Vacancy.

3. Churchwardens have the care of a benefice during its vacancy: Having first taken out a sequestration from the spiritual court, they are to manage all the profits and expences of the benefice

refice for him that shall next succeed; plow and sow his glebe; take in the crop; collect tithes; thresh out and sell corn; repair houses and fences, and the like. And they shall take care that during the vacancy the church shall be duly served by a curate approved by the bishop, whom they are to pay out of the profits of the benefice. And if the successor thinks himself aggrieved by them, he may appeal to the ecclesiastical judge. *Par. L. 99.*

Camp. Par. Off. 90.

4. They (or the constable) shall levy the penalties for persons exercising their worldly calling on the Lord's day. 29 C. 2. c. 7. Worldly calling on the Lord's day.

5. They shall suffer no plays, feasts, banquets, suppers, church ales, drinkings, temporal courts or leets, lay juries, musters, or any profane usage to be kept in the church or church yard. Profanation of the church.

Can. 88.

6. They shall see that the parishioners resort to church, and continue there orderly, during divine service; and shall present the defaulters. *Can. 90.* Attending divine service.

7. They shall not suffer any idle persons to abide either in the church yard, or church porch, during the time of divine service or preaching; but shall cause them to come in, or to depart. Loitering in the church yard.

Can. 19.

8. They shall levy the forfeiture of 12 d. a Sunday, on the goods of persons not coming to church. 1 El. c. 2. Levying 12 d. a Sunday for not coming to church.

9. They (or the constable) shall levy the penalty of 3 s. 4 d. for using unlawful pastimes on the Lord's day. 1 C. c. 1. Sports on the Lord's day.

10. They (or the constables or overseers) shall levy the penalties for being present at unlawful conventicles. 22 C. 2. c. 1. Conventicle.

11. They shall, on pain of 20 l. present at the sessions once a year, the monthly absence from church of all recusants, and the names and ages of their children above nine years old, and the names of their servants. And if the party presented shall be indicted and convicted, the churchwarden shall have a reward of 40 s. to be levied of the recusant's goods, by warrant of the justices in sessions. 3 J. c. 4. Recusants.

12. They shall keep excommunicated persons out of the church. *Can. 85.* Excommunicate persons.

13. They shall take care to have in the church a large bible, book of common prayer, book of homilies, a font of stone, a decent communion table, with proper coverings, the ten commandments set up at the east end, and other chosen sentences upon the walls, a reading desk, and pulpit, and chest for alms; all at the charge of the parish. *Can. 80, 81, 82, 83, 84.* Ornaments of the church.

14. They ought to keep the keys of the belfrey, and to take care that the bells be not rung without good cause, to be allowed by the minister and themselves. *Can. 88.* Bells.

15. They shall have a box, wherein to keep the register, with three locks and keys, two keys to be kept by them, and one by the minister; and every Sunday they shall see that the minister enter therein all christnings, weddings, and burials that have been the week before; and at the bottom of every page, they shall (with the minister) subscribe their names. And they shall, within a month

after

Churchwardens.

a month after *Mar. 25.* yearly, transmit to the bishop a copy thereof for the year before, subscribed as above.

And such register, being carefully preserved, is good evidence; and the falsifying of it is punishable at the common law. *God. 229.*

Communion.

16. They shall, at the charge of the parish, with the advice and direction of the minister, provide bread and wine against the communion. *Can. 20.*

Incumbent.

17. They (or the overseers) shall levy the penalty of 5*l.* for an incumbent not reading the common prayer once a month. 13 & 14 C. 2. c. 4.

Charity briefs.

18. They shall collect money on charity briefs, on pain of 20*l.* 4 *An. c. 14.*

Strange preachers.

19. They shall not suffer any strangers to preach, but such as shall appear qualified on shewing their licence; and they shall see that such preachers register or subscribe their names in a book to be kept for that purpose, with the day when they preached, and the bishop's name who granted the licence. *Can. 50, 52.*

Burying in woollen.

20. They shall, on certificate from the minister, apply to the magistrates, for conviction of offenders in not burying in woollen. 30 C. 2. c. 3.

Persons denied christian burial.

21. Persons who murder themselves, or die excommunicated, are denied christian burial; and therefore the churchwardens are not to suffer them to be buried in the church or church yard, without special licence from the bishop. *Degge 183.*

Eating flesh on fish days.

22. They shall levy the penalties for eating flesh on fish days. 5 *El. c. 5.*

Unlicensed alehouse.

23. They (or the constable) shall levy the penalty for keeping an unlicensed alehouse. 3 C. c. 3.

Drunkenness.

24. They shall receive the penalties for tipling and drunkenness. 4 *J. c. 5.* 21 *J. c. 7.*

Suffering tipling.

25. They (or the constable) shall levy the penalty for suffering tipling. 1 *J. c. 9.*

Spirituous liquors.

26. They shall receive the penalties for hawking spirituuous liquors. 9 G. 2. c. 23.

Corn.

27. They (or the overseers) shall levy the penalty for selling corn by a wrong measure. 22 C. 2. c. 8.

Butter and cheese.

28. They (or the overseers) shall receive the penalties relating to butter and cheese. 13 & 14 C. 2. c. 26.

Foreign cattle.

29. They, and the overseers, shall distribute amongst the poor foreign cattle imported, forfeited, and killed. 32 C. 2. c. 2.

Weights and measures.

30. They (or the overseers) shall levy the penalties relating to weights and measures. 16 C. c. 19. 22 C. 2. c. 8.

Hawkers and pedlars.

31. They shall carry hawkers and pedlars trading without licence, before a justice of the peace. 9 & 10 *W. c. 27.*

County rate.

32. They (or the overseers) shall pay to the High Constables the general county rate, out of their money collected for the poor. 12 G. 2. c. 29.

Servants firing houses.

33. They shall receive the penalty for servants carelessly firing houses. 6 *An. c. 31.*

Tracing hares.

34. They shall receive the penalties for tracing hares in the snow (and other game penalties). 1 *J. c. 27.*

35. They

35. They shall join with the constables and other inhabitants in making assessments for conveying offenders to the gaol or house of correction. 3 *J. c.* 10. 13 *E.* 14 *C.* 2. *c.* 12. Imprisoning of offenders.

36. They shall join with the constable and surveyor of the highways in chusing and returning new surveyors. 3 *W. c.* 12. Surveyors of the highways.

VI. Of presentments; and therein concerning sidesmen or assistants.

1. Churchwardens by their oath are to present or certify to the bishop, or his officer, all things presentable by the ecclesiastical laws, which relate to the church, minister, and parishioners. Oath to present.

2. The articles delivered to them for their direction, are for the most part founded on the book of canons made in the year 1603, and the rubricks of the common prayer. Book of articles.

3. There are also several things which they are bound to present by act of parliament; as tipling or drunkenness by the statute of 4 *J. c.* 5. recusants by 3 *J. c.* 4. Statute presentments.

4. They may present as often as they please, but shall not be obliged above once a year where it hath so been used, and not above twice any where, except it be at the bishop's visitation. When to present. *Can.* 116, 117.

5. For the presentments of any church or chapel for one year, the register shall have only 4*d.* *Can.* 116. Fee for taking-in presentments.

6. The minister may present where the churchwardens neglect. *Can.* 113. But such presentment ought to be upon oath. 2 *Ventr.* 42. Minister may present.

7. In larger parishes, there are officers called sidesmen (anciently synodsmen, otherwise called questmen) to assist the churchwardens in their enquiries and presentment of offenders: They shall be chosen yearly in *Easter* week by the minister and parishioners, if they can agree; if not, by the bishop. *Can.* 90. Sidesmen.

8. The sidesman's oath, said to have been agreed on by the civilians and common lawyers, is this: Sidesman's oath.

“ You shall swear, that you will be assistant to the churchwardens in the execution of their office, so far as by law you are bound: So help you God.” *Cod.* 242.

9. Whereas churchwardens are sworn, and ministers charged, to present as well crimes and disorders, as also the common fame which is spread abroad of them, whereby they are sometimes troubled by the delinquents or their friends; all judges both ecclesiastical and temporal are (by the 115th canon) admonished and exhorted, as they regard and reverence the fearful judgment seat of the highest judge, that they admit not in any of their courts any suit against churchwardens or ministers for any such presentments; considering that they tend to the restraint of shameless impiety, and that the rules of charity and government do presume that they did nothing therein of malice, but for the discharge of their consciences. Presentment on common fame.

But

But as common fame is often false, and as it is better that ten offenders should escape than one innocent person suffer, and as the above canon supposes that an action may be brought for such presentment; it seemeth good to use caution in this matter, unless the offence be very notorious.

VII. Their accounting.

When to account.

1. At the end of the year, or within a month after at most, they shall before the minister and parishioners (at a vestry) give up a just account of such money as they have received, and also what particularly they have bestowed in reparations, and otherwise, for the use of the church; and shall deliver up to the parishioners the money and parish goods in their hands, to be delivered over by them to the next churchwardens by bill indented. *Can. 89.*

How compelled to account.

2. And if they refuse, they may be presented at the next visitation by the new churchwardens; or any of the parish that are interested may by process call them to account before the ordinary; or the succeeding churchwardens may have a writ of account at common law. And if they have disbursed more than they have received, the succeeding churchwardens shall pay what is due to them, and account it among their disbursements. *1 Roll's Abr. 121.*

Accounting to a select vestry.

3. If the custom of the parish is, for a certain number of persons to have the government thereof, and the account is given up to them; the custom is a good custom, and the account given to them a good account. *Cod. 242.*

Vouchers.

4. Mr. Barlow says, that for disbursements of any sum not above 40 s. their own oath is held sufficient proof; but for all sums above, receipts must be produced. *Barl. 105.* But it may be more satisfactory if receipts be produced for all.

Allowance of the account.

5. The allowance of the account may be by entring it in the church book of accounts, and having it signed by those in the vestry who allow the accounts. *Barl. 105.*

Account allowed, final.

6. When they have faithfully accounted, and their account is allowed by the minister and major part of the parishioners present, it shall not afterwards be in the power of any to make them account again; unless some fraud in their account is afterwards discovered. *Wood 157. Barl. 105.*

VIII. Their punishment on misbehaviour.

Churchwardens committing waste.

1. If the churchwardens waste the goods of the church, the new churchwardens may call them to an account before the bishop, or bring their action at common law. *Read. Ch. Service.*

Parishioners may be evidence against them.

2. And whereas many churchwardens and overseers, and other persons intrusted to receive collections for the poor, and other publick monies relating to the churches and parishes whereunto they belong, do often mispend the same, to the prejudices of such parishes, and of the poor, and other inhabitants thereof; and the parishioners, who are the only persons sometimes who can make proof

proof thereof, have not been allowed to be witnesses against them: it is enacted, that in all actions to be brought in any court at *Westminster*, or at the assizes, for the recovery thereof, the evidence of the parishioners, other than such as receive alms, shall be taken and admitted. 3 *W. c. 11. f. 12.*

3. But churchwardens are not answerable for indiscretion, but Not answerable for deceit only, if they lay out more money than is needful. for indiscretion. *Wood 154.*

IX. Their indemnity on doing their duty.

If an action be brought against any churchwardens, or persons Double costs. called sworn men, executing the office of churchwarden, for any thing done by virtue of their office, they may plead the general issue, and give the special matter in evidence; and if a verdict is given for them, or the plaintiff shall be nonsuit, or discontinue, they shall have double costs. 7 *J. c. 5. 21 J. c. 12.*

In *Kercheval's case, M. 8 Car.* An action was brought against the churchwardens for a presentment upon common fame of incontinency. Upon Not guilty, it was found for the churchwardens, and moved that they might have double costs: But it was resolved, that this being merely ecclesiastical, is not within this statute; for that the statute was never intended, but where they shall be vexed concerning temporal matters, which they shall do by virtue of their office, and not for presentments concerning matters of fame. *Cro. Car. 285, 286.*

Clergy.

I. Clergymen.

II. Benefit of clergy.

I. Clergymen.

1. **B**Y the 43 *El. c. 2.* Clergymen are liable to the poor rates, Liable to the poor. for their glebe and tithe.

2. And Mr. *Hawkins* says, clergymen are within the purview And to the high-ways. of the statutes relating to the repair of highways, in respect of their spiritual possessions, as much as any other persons whatsoever in respect of any other possessions; for the words are general, and there is no kind of intimation in the said statutes that any particular persons shall be exempted more than others. 1 *Haw. 204.*

3. And it seems to be now generally settled, that clergymen And to other publick charges. are liable to all publick charges imposed by act of parliament, where they are not specially excepted.

4. No clergyman shall take to farm any lands (except he have Shall not farm. not sufficient glebe for the expences of his household); on pain of

10 *l.*

- 10 *l.* a month, half to the king, and half to him that shall sue: and the leases or contracts shall be void. 21 *H. 8. c. 13.*
- Shall not buy to sell again. 5. No clergyman shall buy to sell again any cattle, corn, fish, wool, wood, victual, or any manner of merchandize; on pain of treble value, half to the king, and half to him that shall sue: and the contract shall be void. 21 *H. 8. c. 13.*
- Shall not keep a tanhouse or brewhouse. 6. No clergyman shall keep any tanhouse, or any brewhouse but for his own house; on pain of 10 *l.* a month, half to the king, and half to him that shall sue. 21 *H. 8. c. 13.*
- May be imprisoned for incontinency. 7. The ordinary may punish clergymen for incontinency, by committing them to ward or prison by his discretion. 1 *H. 7. c. 4.*
- Privilege against an assault. 8. A person, laying violent hands on a clergyman, may be punished in the ecclesiastical court. 13 *Ed. 1. Circumspicite agatis. 9 Ed. 3. st. 1. c. 3. 2 Inst. 492.*
- May have the benefit of clergy more than once. 9. Clergymen in holy orders may have the benefit of clergy a second, or third time, or oftner. 2 *H. H. 374, 375.*
- Shall not be burnt in the hand. 10. A clerk in holy orders shall not be burned in the hand, but shall have the same privilege as if he had been burned in the hand; and therefore shall not be drawn in question in the ecclesiastical court to deprive him, or inflict any ecclesiastical censure upon him. 2 *H. H. 389.*
- Shall not serve temporal offices. 11. To the intent that clergymen may the better discharge their duty in celebration of divine service, and not be intangled with temporal business; if any of them be chosen to any temporal office, he may have his writ to be discharged. 1 *Inst. 96.*
- Shall not serve in war. 12. Ecclesiastical persons have this privilege, that they ought not in person to serve in war. 2 *Inst. 4.*
- Need not appear at the torn. 13. Ecclesiastical persons are not bound to appear at the torn, or view of frankpledge. 52 *H. 3. c. 10. 9 Ed. 2. c. 3. 2 Inst. 4.*
- Shall not be arrested in the church. 14. No clergyman shall be arrested in any church or churchyard, whilst he attends to divine service; on pain of imprisonment of the offender, and ransom at the king's will, and gree to the party arrested. 50 *Ed. 3. c. 5. 1 R. 2. c. 15.*
- But the arrest notwithstanding (if not on a Sunday) is good in law. *Watson 636.*
- Shall not be taken on a statute staple. 15. The body of a clergyman may not be taken by force of any process upon a statute staple, or statute merchant. 2 *Inst. 4.*
- Nor on a capias. 16. If an action of trespass, debt, account, or other action wherein process of *capias* lies, be brought against a clerk in holy orders, and the sheriff return that he is a clergyman beneficed, having no lay fee in which he may be summoned, in this case the plaintiff cannot have a *capias* to arrest his body, but a writ to the bishop to compel him to appear. 13 *Ed. 1. c. 45. 2 Inst. 4. Degge 157.*
- Sheriff shall not levy on his ecclesiastical goods. 17. If a person be bound in recognizance in the chancery, or in any other court, and he pay not the sum at the day; by the common law, if the person had nothing but ecclesiastical goods, the recognizee could not have a *levari facias* to the sheriff to levy the same of these goods, but the writ ought to be directed to the bishop to levy the same of his ecclesiastical goods. 2 *Inst. 4.*
- Shall not be amerced of his spiritual goods. 18. A clergyman shall be amerced only according to his lay tenement, and not after the quantity of his spiritual benefice. *Magn. Chart. c. 14. Cod. 15.*
19. Di-

19. Distresses shall not be taken by sheriffs, or other of the king's ministers, in the inheritance of the church, wherewith it was anciently endowed; but otherwise it is of late purchase. *9 Ed. 2. c. 9. 2 Inst. 4. Cod. 18.* Distress not to be made on his spiritual inheritance.

20. A clergyman is not bound to pay tolls or other like customs, for his ecclesiastical goods; and if he be molested therefore, he may have a writ for his discharge. *2 Inst. 4. Cod. 21.* Shall not pay toll of his spiritual goods.

And this not only for all the goods and merchandizes of clergymen gotten upon their church livings, but also for all goods and merchandizes by them bought, to be spent upon their rectories and church livings. *Degge 153.*

21. Lord Coke, in his readings on the *Magna Charta*, says thus; Observation.
 " True it is, that ecclesiastical persons have more and greater liberties than other of the king's subjects, wherein to set down all would take up a whole volume of itself, and to set down no example, agreeth not with the office of an expositor; therefore some few examples shall be expressed, and the studious reader left to observe the rest as he shall read them in our books, and other authorities of law." And the instances he gives, are chiefly those which are mentioned above; nevertheless I do not find any author since his time, who hath said what are those other many and great privileges of the clergy; but the authors do generally adhere to these particular instances, probably as being supported by so great an authority: Other privileges have been abolished, since his time, by acts of parliament, and the adjudications of the temporal courts; and others perhaps lost by disuse; and possibly some of the instances above mentioned would have been gone likewise, or not looked upon as of so much authority, if they had not been vouched by Lord Coke.

II. Benefit of clergy.

I. Original of the benefit of clergy.

II. By what persons it may be demanded.

III. In what cases it may be demanded.

IV. At what time it must be demanded.

V. Effect of clergy allowed.

I. Original of the benefit of clergy.

Anciently princes and states, converted to christianity, in favour of the clergy, and for their encouragment in their offices and employments, and that they might not be so much intangled in suits, did grant to the clergy very bountiful privileges and exemptions; and particularly, an exemption of their persons from criminal proceedings, in some capital cases before secular judges; which was the true original of the benefit of clergy. Original of the benefit of clergy.

The clergy increasing in wealth, power, honour, number, and interest, afterwards set up for themselves; and that which they obtained by the favour of princes and states at first, they now began

to claim as their right, and a right of the highest nature, namely, by the law of God; and by their canons and constitutions endeavoured, and in some places obtained, vast extensions of these exemptions, both with regard to the persons concerned, to wit, not only to persons in holy orders, but also to all that had any kind of subordinate ministration relative to the church; and likewise in respect of the causes, exempting as far as they could all causes of clergymen, as well civil as criminal, from the jurisdiction of the secular power, and wholly subordinating them immediately and only to the ecclesiastical jurisdiction, which they supposed to be lodged first in the pope by divine right and investiture from Christ, and from the pope shed abroad into all subordinate and ecclesiastical jurisdiction.

And by this means they endeavoured, and in some kingdoms and for some ages obtained, that there was a double supreme power in every kingdom; the one ecclesiastical, absolute, and independent upon any but the pope, over ecclesiastical men and causes; and the other secular, of the king, or civil magistrate.

But this claim of exemption, altho' it obtained much in this kingdom, yet grew so burdensome, that it was from time to time qualified and abridged by the civil power, sometimes by acts of parliament taking it away in some cases, sometimes by the interpretation and construction of the judges, and sometimes by the contrary usage of the kingdom: for ecclesiastical canons never bound in *England*, farther than they were received, and so had not their authority from their own strength and obligation, but from the usages and customs of the kingdom that admitted them, and only so far forth as they were so admitted.

And therefore if they were indicted in cases criminal, but not capital, nor wherein they were to lose life or limb, there the privilege of clergy was not allowed; and therefore not in indictments of trespass or petit larceny.

Also it was not allowed them in high treason.

But, at the common law, in all cases of felony or petit treason, clergy was allowable, excepting two, *insidiatores viarum*, & *arson*. 2 H. H. 323 — 330.

Who may demand it.

Others besides clergymen.

Women.

II. By what persons it may be demanded.

1. By a favourable interpretation of the statutes relating to the benefit of clergy, not only those actually admitted into some inferior order of the clergy, but also those who were never qualified to be admitted into orders (which was formerly tried by putting them to read a verse) have been taken to have a right to this privilege, as much as persons in holy orders. 2 Harw. 338.

2. But by the common law, a woman could not have the benefit of clergy: but now by the statute of 3 W. c. 9. a woman convicted or outlawed for any felony, for which a man might have his clergy, shall upon praying the benefit of that statute, be subject only to such punishment as a man would be in the like case.

3. A person convicted of heresy, a Jew, or a Turk, shall not have their clergy; but a person excommunicate shall have his clergy. *2 H. H. 373.* Hereticks, Jews, Turks, persons excommunicate.

4. Also every person (not being within orders) who hath been once admitted to his clergy, shall not be admitted to the same a second time. *4 H. 7. c. 13.* Persons having had clergy once.

5. And if he is convicted of murder, he shall be marked (unless he is a peer, *2 H. H. 376.*) with an M, on the brawn of the left thumb; and if for any other felony, with a T. *4 H. 7. c. 13.* Burning in the hand.

6. But he shall not be ousted of his clergy, by the bare mark in his hand, or by a parol averment, without the record testifying it, or a transcript thereof, according to the following statutes. *2 H. H. 373.* Burning not a conclusive proof of the conviction.

7. By *34 & 35 H. 8. c. 14.* The clerk of the crown, or of the peace, or of assize, shall certify a transcript briefly of the tenor of the indictment, outlawry, or conviction, and attainder, into the king's bench in 40 days: And the clerk of the crown, when the judges of assize, or justices of the peace write to him for the names of such persons, shall certify the same with the causes of the conviction or attainder. Conviction how to be certified.

8. Another method is given by the *3 W. c. 9.* which enacts, that the clerk of the crown, clerk of the peace, or clerk of assize, where a person admitted to clergy shall be convicted, shall at the request of the prosecutor, or any other on the king's behalf, certify a transcript briefly and in few words, containing the effect and tenor of the indictment and conviction, of his having the benefit of clergy, and the addition of the party, and the certainty of the felony and conviction, to the judges where such person shall be indicted for any subsequent offence. *S. 7.* How it may be otherwise certified.

9. Also it seems, that if the party deny that he is the same person, issue must be joined upon it, and it must be found upon trial that he is the same person, before he can be ousted of clergy. *2 H. H. 373.* How tried whether he is the same person.

III. In what cases it may be demanded.

1. By the *25 Ed. 3. st. 3. c. 4.* All manner of clerks, who shall be convicted before the secular judges, for any treasons or felonies, touching other persons than the king himself, shall have the privilege of holy church. Formerly allowed in all felonies.

2. Clergy was never allowed in this nation, in cases of high treason; nor is it allowed on indictments of petit larceny or trespass; but by the above recited act, clergy was allowed in all treasons and felonies, except treason against the king: So that after this statute, the benefit of clergy might be pleaded and allowed in all other treasons and felonies. *Hale's Pl. 230. 2 H. H. 326.* But not in treason or petit larceny.

3. Consequently, wherever clergy is not allowable in any other cases, it is taken away by some subsequent act of parliament. *Hale's Pl. 230.* Clergy taken away by statutes.

4. Consequently, where a new felony is made by an act of parliament, clergy is to be allowed, unless expressly taken away by such statute. *Hale's Pl. 230.* Allowed in new felonies, unless expressly taken away.

And if it maketh a new felony, and takes away clergy not generally, but in such or such cases, regularly in other cases, clergy is allowable; as if it take away clergy in case the party be convicted by verdict, yet he shall have his clergy, if he stand mute. 2 H. H. 335.

But this is in part remedied by the 3 W. c. 9. which enacts, that if any person be *indicted* of any offence, for which by virtue of any former statute he is excluded from clergy, if he had been convicted by verdict or confession; if he stand mute, or will not answer directly, or challenge peremptorily above 20 of the jury, or be outlawed, he shall not be admitted to his clergy. S. 2. But this extends not to *appeals*, nor to offences made felonies by subsequent statutes. 2 Haw. 348.

But if the statute enacts generally, that it shall be felony without benefit of clergy, or that he shall suffer as in case of felony without benefit of clergy, this excludes it in all circumstances, and to all intents. 2 H. H. 335.

Therefore where clergy is excluded, the indictment must bring the offence within the statute.

5. It follows further, from what hath been said, that in all cases where an act of parliament ousteth clergy, in case of any felony, the indictment must precisely bring the party within the case of the statute; otherwise, altho' possibly the fact itself be within the statute, and it may so appear upon the evidence, yet if it be not so alledged in the indictment, the party, tho' convicted, shall have his clergy. 2 H. H. 336.

But altho' the case be so laid in the indictment, that it comes within the statute, to exempt the prisoner from clergy, yet if upon the evidence it fall out, that tho' it be a felony, yet it is not so qualified as laid in the indictment, the jury ought to find him guilty of the felony simply, but not as to the manner laid in the indictment, and thereupon the prisoner shall be admitted to his clergy; and this is commonly done. 2 H. H. 336.

Indictment on a statute which ousteth of clergy an offence which was felony at common law.

6. But if the offence was capital at the common law, and a statute only excludes it from clergy; the indictment in such case need not conclude *against the form of the statute*, because the statute doth not alter the nature of the offence, but leaves it to its proper judgment, and only takes away a personal privilege of exemption from such judgment. 2 Haw. 342.

Accessory.

7. Furthermore, from what hath been observed above, it follows, that where an act taketh away clergy from the principal, and saith nothing of the accessory; the accessories as well before, as after, shall have their clergy. 11 Co. 37. *Poulter's case*.

IV. At what time it must be demanded.

To be demanded after conviction.

1. By the ancient common law, the benefit of clergy was demanded, as soon as the prisoner was brought to the bar, before any indictment or other proceeding against him; but this was found a great inconvenience to the prisoner, because possibly he might have been acquitted of the felony; or if not, yet in case of an inquest of office, he lost his challenges to such inquest, and yet upon such inquest found, he forfeited his goods, and the profits of his lands; and therefore *Prisot Ch. J.* with the advice of the

the other judges, in the reign of *H. 6.* for the safety of the innocent, would not allow the prisoner the benefit of clergy before he had pleaded to the felony, and (having the benefit of his challenges and other advantages) had been convicted thereof: which course hath been generally observed ever since. *2 Inst. 164. 2 H. H. 378.*

2. And this benefit of clergy may be allowed by the court in discretion, tho' the party challenge it not. *Hale's Pl. 239.* May be allowed tho' not demanded.

V. Effect of clergy allowed.

1. Persons admitted to their clergy, may be continued in prison as a further punishment, not exceeding one year. *18 El. c. 7.* Persons having their clergy may be continued in gaol.

2. And by *4 G. c. 11.* Persons convicted of offences within benefit of clergy (except receivers and buyers of stolen goods) may, instead of being whipped and burnt in the hand, be transported for seven years. May be transported.

3. A person admitted to his clergy, forfeits all his goods that he hath at the time of the conviction. *2 H. H. 388.* Shall forfeit their goods.

4. But presently upon his burning in the hand, he ought to be restored to the possession of his lands, and from thenceforth to enjoy the profits thereof. *2 H. H. 388.* But not lands.

5. Also, it restores him to his credit; and consequently enables him to be a good witness. *2 Harw. 364.* Credit restored.

6. And it is holden that after a man is admitted to his clergy, it is actionable to call him felon; because his offence being pardoned by the statute, all the infamy and other consequences of it are discharged. *2 Harw. 365.* Actionable to call him felon.

Clerk of the peace.

1. **T**HE *custos rotulorum* shall appoint an able and sufficient person, residing in the county or division, to execute the office of clerk of the peace, by himself or his sufficient deputy (to be allowed of by the said *custos rotulorum*, *37 H. 8. c. 1.*); and to take and receive the fees, profits, and perquisites thereof, for so long time only as such clerk of the peace shall well demean himself in his said office. *1 W. c. 21. f. 5.* Who shall appoint.

2. But the *custos rotulorum* shall not sell the place of clerk of the peace, or take any bond or other assurance, to receive any reward, fee, or profit, directly or indirectly, to him or to any other person for such appointment; on pain that such *custos rotulorum* selling, and such clerk of the peace buying, shall be disabled to hold their respective places, and shall each forfeit double value of the thing given, to him who shall sue. *1 W. c. 21. f. 8.* Office not to be sold.

3. And every clerk of the peace, before he enters upon the execution of his office, shall in open sessions take the oath following; Oath.

" I *A. B.* do swear, that I have not, nor will pay any sum or
 " sums of money, or other reward whatsoever, nor given any
 " bond or other assurance to pay any money, fee, or profit, di-
 " rectly or indirectly, to any person or persons whomsoever,
 " for such nomination and appointment: So help me God."
 1 *W. c. 21. f. 8.*

Qualifying.

4. He shall moreover take the oaths of allegiance, supremacy, and abjuration, in the same manner as other persons who qualify for offices.

Not to act as solicitor.

5. No clerk of the peace, or his deputy, shall act as solicitor, attorney, or agent, or sue out any process at any general or quarter sessions, where he shall execute the office of clerk of the peace or deputy; on pain of 50*l.* to him who shall sue in 12 months, with treble costs. 22 *G. 2. c. 46. f. 14.*

Shall certify outlawries.

6. The clerk of the peace shall certify into the king's bench, the names of such as be outlawed, attainted, or convicted of felony. 34 & 35 *H. 8. c. 14.*

Shall deliver estreats to the sheriff.

7. He shall deliver to the sheriff, within ten days after *Sep. 29.* yearly, a perfect estreat or schedule of all fines, and other forfeitures in sessions. 22 & 23 *C. 2. c. 22. f. 7.*

Shall deliver estreats into the exchequer.

8. And shall also yearly, on or before the second *Monday* after the morrow of All-souls, deliver into the court of exchequer a perfect duplicate, certificate, and estreat of all such estreats and schedules delivered to the sheriffs; on pain of 50*l.* half to the king, and half to him that shall sue. 22 & 23 *C. 2. c. 22. f. 8.* And moreover he may be amerced for the same, by the barons of the exchequer. 3 *G. c. 15.*

Upon oath.

9. And he shall, upon delivery of the said estreats into the court of exchequer, take the following oath, to be administered by one of the barons;

" You shall swear, that these estreats, now by you delivered,
 " are truly and carefully made up and examined, and that all fines,
 " issues, amerciements, recognizances, and forfeitures, which were
 " set, lost, imposed, or forfeited, and in right and due course of
 " law ought to be estreated in the court of exchequer, are, to
 " the best of your knowledge and understanding, therein con-
 " tained; and that in the same estreats are also contained and ex-
 " pressed, all such fines as have been paid into the court, from
 " which the said estreats are made, without any wilful or fraudu-
 " lent discharge, omission, misnomer, or defect whatsoever."
 4 & 5 *W. c. 24. f. 5.*

Penalty of con-
 cealing fines.

10. And if he shall spare, take off, discharge, or conceal any such fine or forfeiture, unless it be by rule of court, he shall forfeit treble value, half to the king, and half to him that shall sue; and shall also forfeit his office, and be incapable to be employed in any office where the revenue is concerned. 22 & 23 *C. 2. c. 22. f. 9.*

Fees.

11. The clerk of the peace is not bound to enter judgment, or the like, at the suit of any, without having the fee due for the same; but if the court order any thing without suit of another, to wit,

wit, *ex officio*, there he ought to enter the same without any fee having for the entring thereof. *Crom.* 159.

Also Mr. *Crompton* says, he shall have for every recognizance of the peace taken in court 2*s.* and for every release of the peace there 2*s.* and for process awarded against any to find surety of the peace 2*s.* *Crom.* 160.

And by 10 & 11 *W. c.* 23. he shall have only 2*s.* for drawing an indictment of felony; and if it is defective, he shall draw a new one *gratis*, on pain of 5*l.* with full costs, to him that shall sue. *S.* 7, 8.

12. If any clerk of the peace shall misdemean himself in the execution of his office, and thereupon a complaint and charge in writing of such misdemeanor shall be exhibited against him, to the justices in sessions, the said justices may, on examination and due proof thereof openly in the said sessions, suspend or discharge him from the said office; and in such case, the *custos rotulorum* shall appoint another able and sufficient person, residing in the said county or division, to be clerk of the peace. And in case of refusal or neglect to make such appointment, before the next general quarter sessions, the justices in sessions may appoint one. 1 *W. c.* 21. *f.* 6.

May be displaced
for misbehaviour.

His duty in other matters is interspersed where it falls in amongst the other titles of this book.

Clipping money. See Coin.

Clockmaking. See Servants.

Cloth and clothiers. See Woollen manufactures.

Coaches and chairs. See Excise and Hackney coaches.

Coals and Coalpits.

1. **B**Y the 10 *G. 2. c.* 32. (which by 24 *G. 2. c.* 57. is continued to *Sep. 1. 1757, &c.*) If any person shall wilfully and maliciously set on fire any mine, pit, or delph of coal or cannel coal; he shall be guilty of felony without benefit of clergy. Setting on fire.

2. And by 13 *G. 2. c.* 21. If any person shall divert or convey any water into any coal work, with design to destroy or damage the same; he shall pay to the party grieved treble damages with costs. Drowning.

3. There are many regulations by several statutes, concerning the weights, measures, and prices of coals, especially in and about *London*, and also concerning the duties thereupon, which not being Measure, price, and duty on coals.

of general concern, I shall but just mention the statutes, referring thereunto those who are more particularly concerned.

Statutes concerning the measures and prices of coals, and regulating the coal trade in general, are,

9 *H.* 5. c. 10.

16 & 17 *C.* 2. c. 2.

30 *C.* 2. c. 8.

6 & 7 *W.* c. 10.

9 *An.* c. 28.

12 *An.* ft. 2. c. 17.

3 *G.* 2. c. 26.

4 *G.* 2. c. 30.

11 *G.* 2. c. 15.

17 *G.* 2. c. 35.

19 *G.* 2. c. 35.

23 *G.* 2. c. 26.

Statutes concerning the duties on coals;

1 *J.* 2. c. 15.

6 & 7 *W.* c. 18.

9 & 10 *W.* c. 13.

10 & 11 *W.* c. 21.

8 *An.* c. 4.

9 *An.* c. 6.

9 *An.* c. 23 ft. 90.

12 *An.* ft. 2. c. 9.

1 *G.* ft. 2. c. 23.

5 *G.* c. 9.

22 *G.* 2. c. 37.

Cocoa nuts. See Excise.

Coffee. See Excise.

Coin.

For matters common to this with other treasons, see title **Treason**.

Original of the word.

1. **COIN**, in *French*, signifieth a corner; because in ancient time money was square with corners, as it is in some countries at this day. 1 *Inst.* 207.

Value of coin.

2. The legitimation of money, and the giving it its denominated value, is one special part of the king's prerogative. 1 *H. H.* 188.

Legitimizing foreign coin.

3. And the king may by his proclamation legitimate foreign coin, and make it current money of this kingdom, according to the value imposed by such proclamation. 1 *H. H.* 192.

And therefore both *English* money, coined by the king's authority, and foreign coin made current by proclamation, are within the denomination of lawful money of *England*. 1 *Inst.* 207.

Copper coin.

4. But only gold or silver coin, and not brass or copper, are within this denomination. 1 *Harw.* 42.

And no person can be enforced to take in payment any money but of lawful metal, that is, of silver or gold. 2 *Inst.* 577. Except for sums under six pence. 1 *H. H.* 195.

Counterfeiting the coin of this realm.

5. By the statute of 25 *Ed.* 3. ft. 5. c. 2. it is made treason to counterfeit the coin of this realm: That is to say, whether the person utter it or not. 3 *Inst.* 16. 1 *Harw.* 42.

6. And

6. And if any person shall falsly forge and counterfeit any such kind of coin of gold or silver, as is not the proper coin of this realm, and shall be current therein by the king's consent; he, his counsellors, procurers, aiders and abettors, shall be guilty of high treason. 1 Mar. Sess. 2. c. 6. Counterfeiting foreign current coin.

7. By the 5 El. c. 11. Clipping, washing, rounding, or filing, for lucre or gain, any the proper coin of this realm or the dominions thereof, or of any other realm current within this realm by proclamation, shall be adjudged treason in the offenders, their counsellors, consenters, and aiders. Clipping, washing, filing.

8. And by the 18 El. c. 1. If any person shall, for lucre or gain, by any art, ways, or means, impair, diminish, falsify, scale, or lighten the proper coin of this realm, or any the dominions thereof, or the coin of this realm allowed to be current at the time of the offence committed, by the king's proclamation; he, his counsellors, consenters, and aiders shall be guilty of treason. Impairing, diminishing, falsifying.

9. And if any person (not employed in the mint) shall mark on the edges any the current coin of this kingdom; or, if any person whatsoever shall mark on the edges any of the diminished coin of this kingdom, or any counterfeit coin resembling the coin of this kingdom, with letters or grainings, or other marks or figures like unto those on the edges of money coined in the mint; he, his counsellors, procurers, aiders, and abettors shall be guilty of high treason. 8 & 9 W. c. 26. s. 3. Prosecution to be in six months. 1 An. st. 1. c. 9. Edging.

10. Also, if any person shall colour, gild, or case over with gold or silver, or with any wash or materials producing the colour of gold or silver, any coin resembling any the current coin of this kingdom, or any round blanks of base metal, or of coarse gold or coarse silver, of a fit size and figure to be coined into counterfeit milled money, resembling any the gold or silver coin of this kingdom; or if any person shall gild over any silver blanks of a fit size and figure to be coined into pieces resembling the current gold coin of this kingdom; he, his counsellors, procurers, aiders, and abettors shall be guilty of high treason. 8 & 9 W. c. 26. s. 4. Prosecution to be in 3 months. 8. 9. Colouring.

And by the 15 & 16 G. 2. c. 28. If any person shall wash, gild, or colour any lawful or counterfeit silver coin called a shilling or sixpence, or add to or alter the impression, or any part thereof, on either side, with intent to make such shilling or sixpence resemble a guinea or half guinea; or shall any way alter or colour halfpennies or farthings, with intent to make them resemble a shilling or sixpence; he, his counsellors, aiders, and abettors shall be guilty of high treason. Prosecution to be in six months.

11. Lord Hale, speaking of copper halfpence and farthings, makes it a query, whether the counterfeiting of them be not treason within the statute of 25 Ed. 3. but inclines to the negative. Counterfeiting halfpence and farthings.

1 H. H. 195, 211, 212.

And with this agrees the sense of the legislature, in the statute of 15 & 16 G. 2. c. 28. which reciting that whereas the counterfeiting of the copper coin of this kingdom is only a misdemeanor, and the punishment often very small, therefore enacteth, that

that if any person shall coin or counterfeit brass or copper halfpence or farthings; he, his counsellors, aiders, and abettors, shall suffer two years imprisonment, and find sureties for their good behaviour for two years more. 8. 6.

Counterfeiting
coin not current.

12. If any person shall falsly forge or counterfeit any such kind of coin of gold or silver, as is not the proper coin of this realm, nor permitted to be current within this realm; he, his procurers, aiders, and abettors shall be guilty of misprision of high treason. 14 *El. c. 3.*

Bringing in false
money.

13. If any person shall bring false money into the realm, counterfeit to the money of *England*, knowing the same to be false, to merchandise or make payment, in deceit of the king and his people; he shall be guilty of high treason. 25 *Ed. 3. st. 5. c. 2.*

Also, if any person shall bring from the parts beyond the sea, any forged and counterfeit money like to the gold or silver coin of foreign realms, current in payment within this realm by the king's sufferance and consent, knowing the same to be false and counterfeit, to the intent to utter or make payment of the same within this realm, by merchandizing or otherwise; he, his counsellors, procurers, aiders, and abettors shall be guilty of high treason. 1 & 2 *P. & M. c. 11. f. 2.*

Note; This must be brought from a foreign nation, and not from *Ireland*, or other place subject to the crown of *England*; because the counterfeiting there, is punishable by the laws of our king, as much as in *England*. 1 *Haw. 43.*

Coining prefs and
tools.

14. If any prefs for coinage, shall be found in the custody of any person (other than the officers of the mint), it shall be seized for the king's use; and every person in whose custody such prefs shall be found, shall forfeit 500 *l.* half to the king, and half to the informer. 7 & 8 *W. c. 19. f. 4.*

And by 8 & 9 *W. c. 26.* No person, unless employed in the mint, shall knowingly make or mend, or begin or proceed to make or mend, or assist in the making or mending of any puncheon, counter-puncheon, matrix, stamp, dye, pattern, or mould, of steel, iron, silver, or other metal, or of spaud, or fine founders earth, or sand, or of any other materials whatsoever, in or upon which there shall be, or be made or impressed, or which will make or impress the figure, stamp, or resemblance of both or either of the sides or flats of any gold or silver coin, current within this kingdom; nor shall knowingly make or mend, or begin or proceed to make or mend, or assist in the making or mending of any edger or edging tool, instrument, or engine, not of common use in any trade, but contrived for making of money round the edges with letters, grainings, or other marks or figures resembling those on the edges of money coined in the mint; nor any prefs for coinage; nor any cutting engine for cutting round blanks by force of a screw, out of flatted bars of gold, silver, or other metal; nor shall knowingly buy or sell, hide or conceal, or without lawful authority or sufficient excuse for that purpose, knowingly have in his house, custody, or possession, any such puncheon, counter-puncheon, matrix, stamp, dye, edger, cutting engine, or other tool or instrument before mentioned; on pain that such person, his counsellors,

counsellors, procurers, aiders, and abettors, shall be guilty of high treason. 8 & 9 W. c. 26. f. 1. Prosecution to be in six months. 1 An. st. 1. c. 9. f. 2.

And if any person shall, without lawful authority, knowingly convey, or assist in conveying out of the mint, any puncheon, counter-puncheon, matrix, dye, stamp, edger, press, or other tool, engine, or instrument used for or about the coining of monies there, or any useful part of such tool or instrument; he, his counsellors, procurers, aiders, or abettors, shall be guilty of high treason. 8 & 9 W. c. 26. f. 2. Prosecution to be in 3 months. S. 9.

And if any puncheon, dye, stamp, edger, cutting engine, press, flask, or other tool, instrument, or engine, used or designed for coining or counterfeiting gold or silver monies, or any part of such tool or engine, shall be hid or concealed in any place, or found in the house, custody, or possession of any person not employed in the mint, nor having the same by some lawful authority; any person whatsoever discovering the same, may and shall seize the same, and carry them forthwith to some justice of the peace to be by him secured, to be produced in evidence against any person who shall be prosecuted for any such offence. And after they have been produced in evidence, they shall forthwith by order of the court (or by order and in the presence of a justice of the peace, if there hath been no trial) be totally defaced and destroyed. 8 & 9 W. c. 26. f. 5.

15. For the better preventing the clipping, diminishing, or Selling of clip-impairing the current coin, if any person shall buy or sell, and pings. knowingly have in his custody or possession, any clippings or filings of the current coin of this kingdom; he shall forfeit the same, and also 500 l. half to the king, and half to the informer; and shall be branded in the right cheek with the letter R; and be imprisoned till the payment of the 500 l. 6 & 7 W. c. 17. f. 4.

16. And if any shall cast ingots or bars of silver, in imitation Bullion. of Spanish bars or ingots, or stamp them in likeness of the Spanish stamp, he shall forfeit the same, and also 500 l. half to the king, and half to the informer. 6 & 7 W. c. 17. f. 2.

And if any broker, not being a trading goldsmith or refiner of silver, shall buy or sell any bullion or molten silver, he shall be imprisoned 6 months. S. 7.

And two justices may search (and with the help of a constable may break open houses, trunks, or boxes, to search) for bullion suspected to be concealed; and if found, they shall seize the same, and the person in whose possession it shall be found; and if such person shall not prove by the oath of himself, or of a credible witness, that it is lawful silver, and was not current coin, nor clippings thereof, he shall be committed; and if on his trial he shall not prove the same by one witness, he shall be imprisoned six months. S. 8.

And no person shall ship any molten silver or bullion, without certificate from the court of the Lord mayor and aldermen of London, and oath made before them by the owner and two witnesses, that it is foreign bullion, and that no part of it was the coin

coin of this realm, or clippings thereof, nor plate wrought within this kingdom; on pain of forfeiting the same, half to the king, and half to him who shall sue. And the master or captain of a ship permitting the same, shall forfeit 200*l.* to him who shall sue; and if it is a king's ship, he shall also forfeit his employment. Also any officer of the customs offending herein, shall forfeit 200*l.* and his office. And in case of seizure of such bullion, or action brought for the forfeitures, the proof shall lie upon the owner; and for want of proof, it shall be forfeited. 7 & 8 *W. c.* 19. *f.* 8, 9.

And if any bullion is entred to be exported, other than in the name of the true owner, it shall be forfeited, half to the king, and half to him who shall seize or discover the same. 6 & 7 *W. c.* 17. *f.* 14.

Blanched copper
and other base
metal.

17. And whereas several mixtures of metals have been invented in imitation of gold and silver, and blanced copper is principally made use of in imitation of silver, and seldom, if ever, for any honest or good purpose, it is enacted, that if any person shall blanch copper for sale, or mix blanced copper with silver, or knowingly buy or sell or offer to sale blanced copper alone, or mixed with silver; or shall knowingly and fraudulently buy or sell or offer to sale any malleable composition or mixture of metals or minerals, which shall be heavier than silver, and look, and touch, and wear like standard gold, but be manifestly worse than standard; he shall be guilty of felony, and shall suffer death as in case of felony. Prosecution to be in 3 months. 8 & 9 *W. c.* 26. *f.* 6, 9.

Paying coin un-
der value.

18. If any person shall take, receive, pay, or put off any counterfeit milled money, or any milled money whatsoever unlawfully diminished, and not cut in pieces, at or for a lower rate or value, than the same by its denomination doth or shall import, or was coined or counterfeited for; he shall be guilty of felony, and suffer death as in case of felony. Prosecution to be in 3 months. 8 & 9 *W. c.* 26. *f.* 6, 9.

Uttering false
money.

19. If one person counterfeits, and by agreement before that counterfeiting, another person is to take off and vent the counterfeit money, such other is an aider and abettor, and consequently a principal traytor (for in high treason there are no accessaries). 1 *H. H.* 214.

If one person counterfeit, and another (knowing that he did so) puts it off, but without any such previous agreement; such other person seems to be all one with a receiver of him, because he maintains him. 1 *H. H.* 214.

If one person counterfeit, and another person know that he did so, and doth neither receive, maintain, or abet him, but conceals his knowledge; this is misprision of treason. 1 *H. H.* 214.

But, formerly, where it did not appear, that the utterer of counterfeit money knew who counterfeited it, but barely uttered it for his own benefit, altho' he knew it was counterfeit, yet it was only a cheat and misdemeanor, punishable by fine and imprisonment (contrary to the opinion in *Stamford* and *Dalton*); but now, by the statute of 15 *G. 2. c.* 28. it is enacted, that whereas
the

the uttering false money is a crime frequently committed all over the kingdom, and the offenders are not deterred, because it is only a misdemeanor, and the punishment generally small, tho' there is reason to believe that the utterers are often the coiners, or in confederacy with them; therefore, if any person shall tender in payment any counterfeit coin, knowing it to be so, he shall for the first offence suffer 6 months imprisonment, and find sureties for his good behaviour for 6 months longer; for the second offence, shall suffer two years imprisonment, and find sureties for two years more; and for the third offence, shall be guilty of felony without benefit of clergy. S. 2.

And if any person shall tender in payment any counterfeit money (knowing it to be so), and shall either the same day, or within ten days after, knowingly tender other false money in payment, or at the time of such tendering have more in his custody; he shall for the first offence suffer a year's imprisonment, and find sureties for his good behaviour for two years more; and for the second offence, shall be guilty of felony without benefit of clergy. S. 3.

Persons guilty of the said crimes shall be tried and convicted in such manner as is used against offenders for counterfeiting the coin: and the clerk of assize, or clerk of the peace, where the first conviction was had, shall certify the same by a transcript in few words, containing the tenor of such conviction (for which he shall have 2 s. 6 d.); and such certificate being produced in court, shall be sufficient proof of the former conviction. Prosecution to be in 6 months. S. 5, 9.

Note; By this it should seem, that the justices of the peace in sessions have power to try such offenders; otherwise this direction to the clerk of the peace to certify the conviction is impertinent; for he is not the proper person to certify what is done in another court, where he is not necessarily supposed to be present: albeit no power is given to the sessions by any express words in this statute to hear and determine such offences.

20. If false or clipt money be found in a man's hands; if he be suspicious, he may be arrested till he have found his warrant. Having false money in possession.
3 *Inst.* 18. *Hale's Pl.* 21. 1 *Haw.* 43.

21. Any person to whom any silver money shall be tendered, any piece whereof shall be diminished, otherwise than by reasonable wearing, or that by the stamp, impression, colour, or weight thereof, he shall suspect to be counterfeit, may cut, break, or deface such piece: and if any piece so cut, broken, or defaced shall appear to be counterfeit, the person tendering the same shall bear the loss thereof; but if the same shall be of due weight, and appear to be lawful money, the person that cut, broke, or defaced the same, shall receive the same at the rate it was coined for. And if any question arise, whether the piece so cut be counterfeit, it shall be determined by the next justice of the peace, or chief magistrate in a corporation. 9 & 10 *W. c.* 21. s. 1. False money what to be done with.

And if any counterfeit or unlawfully diminished money shall be produced in any court of justice, either in evidence or otherwise, the judge shall cause it to be cut in pieces in open court, or in the

the presence of a justice of the peace, and then to be delivered to or for the person to whom it belongs. 8 & 9 W. c. 26. f. 5.

Bail.

22. By the 3 Ed. 1. c. 15. Persons taken for false money are not bailable by justices of the peace.

But they must take the examinations and informations, and bind over the witnesses to the proper court, and commit the persons accused. 1 H. H. 372.

Evidence.

23. It is not necessary there should be two witnesses in cases of counterfeiting the coin, as it is in other high treasons; but persons may be convicted according to the course of the common law, by one witness only. 1 H. H. 318, 328.

Judgment.

24. The judgment for high treason, relating to the coin, is, to be drawn to the place of execution, and there hanged by the neck till he be dead. 2 Harw. 444.

But it is generally provided by the several statutes, that this shall work no corruption of blood, nor loss of dower.

Excepted out of the general pardon.

25. The abovesaid offences relating to the coin, are excepted out of the general pardon, of the 20 G. 2. c. 52.

Reward for convicting an offender.

26. Every person who shall apprehend any person who hath counterfeited any of the current [gold or silver] coin of this realm; or that for lucre or gain hath clipped, washed, filed, or any way diminished the same; or hath altered shillings and fixpences to make them resemble guineas and half guineas, or halfpennies and farthings to make them look like shillings and fixpences; or shall bring or cause to be brought into this kingdom, any clipp, false, or counterfeit coin; and prosecute such person to conviction: every such person shall have a reward of 40*l*. In order to which, the judge shall give him under his hand, a certificate certifying the conviction, and the county in which it was made, and that the offender was taken and prosecuted by such person; and if any dispute shall arise between several persons apprehending and prosecuting, the judge shall in the certificate appoint the reward to be paid amongst them, in such proportion as he shall think reasonable. The said certificate to be tendered to the sheriff, who shall thereupon pay the same without fee, within one month after such tender and demand, on pain of forfeiting to the party double the sum, with treble costs. The sheriff to be repaid out of the treasury. 6 & 7 W. c. 17. f. 9, 10, 11. 15 & 16 G. 2. c. 28. f. 7.

In like manner a reward of 10*l*. shall be paid, for apprehending and convicting a counterfeiter of the copper money. 15 & 16 G. 2. c. 28. f. 7.

Pardon to accomplices informing.

27. If any person, being out of prison, shall be guilty of clipping, coining, counterfeiting, washing, filing, or otherwise diminishing the [gold or silver] coin of this realm, and afterwards discover two or more persons who have committed any of the said crimes, so as two or more be convicted; he shall have the king's pardon, and if he is an apprentice, he shall be made a freeman. 6 & 7 W. c. 17. f. 12.

In this clause at large in the statute, is an instance of that multiplicity of words, which is sometimes ridiculed in our laws; where

where it is said, *two or more person or persons*, and again, *two or more of the person or persons*.

Further; If any person, being out of prison, shall be guilty of altering sixpences or shillings, to make them look like half guineas or guineas; or altering farthings or halfpennies, to make them look like sixpences or shillings; or of counterfeiting brass or copper halfpennies or farthings; or of uttering false money, ——— and afterwards discover two or more persons who have committed any of the said crimes, so as two be convicted; he shall have the king's pardon. 15 & 16 G. 2. c. 28. s. 8.

28. The commissioners of the treasury may issue a sum not exceeding 600 l. yearly, for the charges and expences of the officers and others employed in the prosecution of offences in counterfeiting, diminishing, or otherwise concerning the current coins of this realm. 7 An. c. 24. s. 4. 15 & 16 G. 2. c. 28. s. 10. Charges of prosecuting.

Commitment.

Anciently there were more felons committed to gaol without mittimus in writing, than were with it: such were all the commitments by constables, watchmen, and private persons arresting for felony, and bringing to the common gaol, long before there were any justices of the peace; and yet mittimus's are not of so ancient date even as they. 1 H. H. 610. Without warrant.

But now, since the *habeas corpus* act, a commitment in writing seems more necessary than it was in former times; otherwise the prisoner may be admitted to bail upon that act, whatsoever his offence may have been.

When a statute appoints imprisonment, but limits no time when, it is to be understood that he shall be imprisoned presently. *Dalt.* when. c. 170.

Concerning which I will set forth,

- I. *Who may be committed.*
- II. *To what place.*
- III. *The form of the commitment.*
- IV. *Charges of the commitment.*
- V. *That the gaoler shall receive the prisoner.*
- VI. *Shall certify the commitment.*
- VII. *Commitment discharged.*

I. *Who may be committed.*

Who may be committed:

1. There is no doubt, but that persons apprehended for offences which are not bailable, and also all persons who neglect to offer bail for offences which are bailable, must be committed. Persons not bailable, or not finding bail.

Persons guilty of contempt.

2. And it is said, that wheresoever a justice is impowered by any statute to bind a person over, or to cause him to do a certain thing, and such person being in his presence shall refuse to be bound, or to do such thing, the justice may commit him to the gaol, to remain there till he shall comply. *2 Haw. 116.*

Persons charged with felony.

3. If a prisoner be brought before a justice, expressly charged with felony upon oath, the justice cannot discharge him, but must bail or commit him. *2 H. H. 121.*

Persons charged on suspicion.

4. But if he be charged with suspicion only of felony, yet if there be no felony at all proved to be committed, or if the fact charged as a felony be in truth no felony in point of law, the justice may discharge him; as if a man be charged with felony for stealing a parcel of the freehold, or for carrying away what was delivered to him, and such like, for which tho' there may be cause to bind him over as for a trespass, the justice may discharge him as to felony, because it is not felony. But if a man be killed by another, tho' it be by misadventure, or self defence (which is not properly felony), or in making an assault upon a minister of justice in execution of his office (which is not at all felony), yet the justice ought not to discharge him, for he must undergo his trial for it; and therefore he must be committed, or at least bailed. *2 H. H. 121.*

Persons not paying their fine.

5. But commitment by the justices of the peace almost in all cases (except for the peace, good behaviour, felony, or higher offences) is but to retain the party till he hath made fine to the king; and therefore if he offer to pay it, or find sureties by recognizance to pay it, he ought not to be committed, but to be delivered presently. *Dalt. c. 170.*

To what place:

II. To what place.

To the gaol.

1. All felons shall be committed to the common gaol, and not elsewhere. *5 H. 4. c. 10.*

House of correction.

2. But vagrants and other criminals, offenders, and persons charged with small offences, may for such offences, or for want of sureties, be committed either to the common gaol, or house of correction, as the justices in their judgment shall think proper. *6 G. c. 19.*

Stocks.

3. And they may commit other offenders to the stocks, or other custody, by particular statutes.

Different county.

4. Generally, if a man commit felony in one county, and be arrested for the same in another county, he shall be committed to gaol in that county where he is taken. *Dalt. c. 170.*

Yet if he escapes, and is taken on fresh suit, in another county, he may be carried back to the county where he was first taken. *Dalt. c. 170.*

Also by the *24 G. 2. c. 55.* If a person is apprehended, upon a warrant indorsed, in another county, for an offence not bailable, or if he shall not there find bail, he shall be carried back into the first county, and be committed (or if bailable, bailed) by the justices in such first county.

III. Form

III. Form of the commitment.

Form:

1. It must be in writing, either in the name of the king, and only tested by the person who makes it, or it may be made by such person in his own name, expressing his office, or authority, and must be directed to the gaoler, or keeper of the prison. 2 *Haw.* 119. In whose name.

Yet the mention of the name and authority of the justice, in the beginning of the mittimus, is not always necessary, for the seal and subscription of the justice to the mittimus is sufficient warrant to the gaoler; for it may be supplied by averment, that it was done by the justice. 2 *H. H.* 122.

2. It should contain the name and surname of the party committed; if known; if not known, then it may be sufficient to describe the person by his age, stature, complexion, colour of his hair, and the like, and to add that he refuseth to tell his name. 1 *H. H.* 577. The party's name.

3. It is safe, but not necessary, to set forth, that the party is charged upon oath. 2 *Haw.* 120. Oath.

4. It ought to contain the cause, as for treason, or felony, or suspicion thereof; otherwise if it contain no cause at all, if the prisoner escape it is no offence at all; whereas if the mittimus contained the cause, the escape were treason or felony, tho' he were not guilty of the offence; and therefore for the king's benefit, and that the prisoner may be the more safely kept, the mittimus ought to contain the cause 2 *Inst.* 52. Cause.

And hereupon it appeareth, that a warrant or mittimus to answer to such things as shall be objected against him, is utterly against law. 2 *Inst.* 591.

Also, it ought to contain the certainty of the cause; and therefore if it be for felony, it ought not to be generally for felony, but it must contain the special nature of the felony briefly, as for felony for the death of such an one, or for burglary in breaking the house of such an one; and the reason is, because it may appear to the judges of the king's bench, upon an *habeas corpus*, whether it be felony or not. 2 *H. H.* 122.

But the want hereof seems not to make the commitment absolutely void, so as to subject the gaoler to a false imprisonment; but it lies in averment to excuse the gaoler or officer, that the matter was for felony. 1 *H. H.* 584.

5. It must have an apt conclusion; as if it is for felony, to detain him till he be thence delivered by law, or by order of law, or by due course of law. 2 *Haw.* 120. 2 *H. H.* 123. Conclusion.

But if the conclusion be irregular, it doth not seem to make the warrant void, but the law will reject that which is surplussage, and the rest shall stand; so that if the matter appear to be such, for which he is to remain in custody, or be bailed, he shall be bailed or committed as the case requires, and not discharged, but the wrong conclusion shall be rejected. 1 *H. H.* 584.

It is also to be observed, that a commitment grounded on an act of parliament, ought to be conformable to the method pre-

Commitment.

scribed by it. As where the overseers were committed for refusing to account, and the warrant concluded in the common form, until they be duly discharged according to law, upon the return of an *habeas corpus* the court held the commitment void, because the warrant ought to have concluded, there to remain until he shall account, as the 43 *El. c. 2.* doth appoint. And a difference is, where a man is committed as a criminal, and where only for contumacy; in the first case, the commitment must be, until discharged according to law; but in the latter, until he comply. 2 *Haw. Not.* 33.

Where a statute appoints imprisonment, but limits no time how long, in such case the prisoner must remain at the discretion of the court. *Dalt. c. 170.*

Seal:

6. It must be under seal; and without this, the commitment is unlawful, the gaoler is liable to a false imprisonment, and the wilful escape by the gaoler, or breach of prison by the felon, makes no felony. 1 *H. H.* 583.

But this must not be intended of a commitment by the sessions, or other court of record; for there the record it self, or the memorial thereof, which may at any time be entred of record, are a sufficient warrant, without any warrant under seal. 1 *H. H.* 584.

Place.

7. It should also set forth the place at which it is made. 2 *Haw.* 119.

Time.

8. It must also have a certain date, of the year and day. 2 *H. H.* 123.

IV. Charges of the commitment.

Charges.

By the 3 *J. c. 10.* Every person who shall be committed to the common or usual gaol, within any county or liberty, by any justice of the peace, for any offence or misdemeanor, the said person so to be committed, having means or ability thereunto, shall bear his own reasonable charges for so conveying or sending him to the said gaol, and the charges also of such as shall be appointed to guard him to such gaol, and shall so guard him thither: And if any such person so to be committed, shall refuse at the time of his commitment and sending to the said gaol, to defray the said charges, or shall not then pay or bear the same; then such justice shall by writing under his hand and seal, give warrant to the constable of the hundred, or constable of the township where such person shall be dwelling and inhabit, or from whence he shall be committed, or where he shall have any goods within the county or liberty, to sell such and so much of the goods and chattels of the said person so to be committed, as by the discretion of the said justice shall satisfy and pay the charges of such his conveying and sending to the said gaol, the appraisement to be made by four of the honest inhabitants of the parish where such goods shall be; the overplus to be delivered to the party.

And by the statute of the 27 *G. 2.* When any person, not having goods or money in the county where he is taken, sufficient to bear the charges of himself and of those who convey him, is committed to gaol, or to the house of correction, by warrant from

Commitment.

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from a justice, then on application by the constable or other officer who conveyed him, to any justice for such county or place, [such justice] shall upon oath examine into and ascertain the reasonable expences, and shall without fee by his warrant order the treasurer to pay the same. But in *Middlesex*, the same shall be paid by the overseers of the poor of the parish where the person was apprehended.

Note; By the *habeas corpus* act, the charges of conveying an offender is limited not to exceed 12d. a mile; which may be an argument for allowing as much in this case, especially as security is to be given before a man is removed on that act by *habeas corpus*, that he shall not escape by the way, which renders guards in that case not so necessary.

V. Gaoler shall receive the prisoner.

If the gaoler shall refuse to receive a felon, or take any thing for receiving him, he shall be punished for the same, by the justices of gaol delivery. 4 Ed. 3. c. 10. *Dalt. c. 170.* Gaoler refusing to receive.

But if a man be committed for felony, and the gaoler will not receive him, the constable must bring him back to the town where he was taken; and that town shall be charged with the keeping of him, until the next gaol delivery: Or the person that arrested him, may in such case keep the prisoner in his own house, as it seemeth. *Dalt. c. 170.*

But in other cases it seems, that regularly no one can justify the detaining a prisoner in custody out of the common gaol, unless there be some particular reason for so doing; as if the party be so dangerously sick, that it would apparently hazard his life to send him to the gaol, or there be evident danger of a *rescous* from rebels, or the like. 2 *Harv. 118.*

VI. The gaoler shall certify the commitment.

By the 3 H. 7. c. 3. The sheriff or gaoler shall certify the commitments, to the next gaol delivery. Commitment to be certified.

VII. Commitment discharged.

It seems that a person legally committed for a crime, certainly appearing to have been done by some one or other, cannot be lawfully discharged by any one but the king, till he be acquitted on his trial, or have an *ignoramus* found by the grand jury, or none to prosecute him on a proclamation for that purpose by the justices of gaol delivery. But if a person be committed on a bare suspicion, without an indictment, for a supposed crime, where afterwards it appears that there was none, as for the murder of a person thought to be dead, who afterwards is found to be alive; it hath been holden, that he may be safely dismissed without any farther proceeding, for that he who suffers him to escape is properly punishable only as an accessory to his supposed offence; and it is impossible that there should be an accessory, where there can be no principal;

Commitment.

cial; and it would be hard to punish one for a contempt, in dis-
regarding a commitment founded on a suspicion, appearing in so
uncontested a manner to be groundless. 2 *Haw.* 121.

Mittimus for felony.

Westmorland. } Sir John Pennington, baronet, one of the justices of
 } our lord the king, assigned to keep the peace in the
said county, and also to hear and determine divers felonies, trespasses,
and other misdemeanors in the said county committed; To the keeper of
the gaol of our said lord the king at ——— in the said county, or to
his deputy there, and to each of them, greeting. Whereas A. O.
late of ——— in the said county, labourer, hath been arrested by the
constable of ——— in the said county, for suspicion of a felony by him,
as it is said, committed, in stealing a black mare, of the value of
40s. the property of A. P. of ——— in the said county, yeoman:
Therefore on the behalf of our said lord the king, I command you and
each of you, that you or one of you receive the said A. O. into
your custody in the said gaol, there to remain till he be delivered
from your custody by the law and custom of England. Given under
my hand and seal at ——— in the said county, the ——— day of ———
in the ——— year of the reign of our said lord ———.

Another.

Westmorland. } J. P. esquire, &c. To the keeper of the common
 } gaol at ——— in the said county, or to his deputy
there: These are in his majesty's name to charge and command you,
that you receive into your said gaol, the body of A. O. late of ———
in the said county, yeoman, taken by A. C. constable of ——— in the
said county, and by him brought before me for suspicion of felony,
that is to say, for stealing ——— And that you safely keep the said
A. O. in your said gaol, until the next general gaol delivery for the
said county [if he be not bailable; or if bailable, then thus] until he
shall thence be delivered by due course of law. And hereof fail you
not, &c.

Another.

Westmorland. } J. P. esquire, &c. To the keeper of ——— I send
 } you herewithal the body of A. O. late of ——— in
the said county, labourer, brought before me this present day, and
charged with the felonious taking and carrying away forty sheep, the
property of ——— which also he hath confessed upon his examination
before me [by which he is not bailable]: Therefore these are on the
behalf of our said lord the king to command you, that immediately
you receive the said A. O. and him safely keep in your said gaol, un-
til that he be thence delivered by the due order of law. Hereof fail
you not, as you will answer for your contempt at your peril. Given
under my hand and seal at ——— &c.

Common prayer.

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Or thus, in the king's name.

Westmorland. } George the second by the grace of God, of Great
 } Britain, France, and Ireland, king, defender of
the faith, and so forth; To the keeper of our gaol at ——— in
our said county of W. or to his deputy, greeting: Whereas A. O.
late of ——— in our said county, ycoman, is arrested for suspicion of
felony by him, as it is said, committed, in feloniously taking and car-
rying away ——— of the value of ——— the property of ———
We therefore command you, and each of you, that you receive him
the said A. O. into your custody in our said gaol, or that one of you
do receive him, there to remain till he be delivered from your
custody, according to the law of our kingdom of England. Wit-
ness J. P. esquire, one of the justices assigned to keep the peace in
our said county, and also to hear and determine divers felonies, tref-
passes, and other misdemeanors in our said county committed, at
——— in the said county, the ——— day of ——— in the ———
year of our reign.

Common. (Nufance by digging holes therein.)
See Highways.

Common prayer.

1. **I**mpugners of the form of worship in the church of *England*, Impugners of the
established by law, and contained in the book of common book of common
prayer; of the 39 articles; of the rites and ceremonies of the prayer.
church; and of episcopal government; shall be excommunicated
ipso facto, and not restored but by the bishop or archbishop on their
repentance. *Can.* 5, 6, 7.

2. If any parson, vicar, or other minister, that ought to use Ministers dero-
the common prayer, or to minister the sacraments, shall refuse to gating from the
do the same, or (wilfully standing in the same) shall use any other book of com-
form, or shall speak any thing in derogation of the same book or mon prayer.
of any thing therein contained; he shall, on conviction, for the
first offence forfeit to the king one year's profit of all his spiritual
promotions, and be imprisoned for six months; for the second of-
fence, shall be deprived of all his spiritual promotions, and be im-
prisoned for a year; and for the third offence, shall be deprived
of all his spiritual promotions, and be imprisoned during life.
And if he has no spiritual promotion, he shall for the first offence
be imprisoned for a year; and for the second offence, during life.

1 *El. c.* 2. *f.* 4—8.

But this shall not restrain the spiritual court, from proceeding
against these offenders; and they may be deprived by the said
court, according to the course of the spiritual law, for the first
offence. *Id. f.* 16, 23. 1 *Haw.* 9.

Any person depraving the book of common prayer.

3. If any person whatsoever shall in plays, songs, or by other open words, speak any thing in derogation of the same book, or any thing therein contained; or shall by open fact cause or procure any minister in any place to say common prayer openly, or to minister any sacrament, in other form; or shall interrupt or let any minister to say the said common prayer; he shall (being indicted for the same at the next assizes) forfeit to the king for the first offence 100 marks, and for the second 400 marks; (which if not paid in 6 weeks after conviction, he shall suffer 6 months imprisonment for the first offence, and 12 months for the second;) and for the third offence shall forfeit all his goods and chattels, and be imprisoned during life. 1 *El. c. 2. s. 9, 10, 11, 12, 13, 20.*

Resident incumbent to read the common prayer once a month,

4. Where an incumbent resides upon his living, and keeps a curate, the incumbent himself (not having lawful impediment to be allowed by the bishop) shall at least once a month openly and publicly read the common prayer, and (if there be occasion) administer the sacraments, and other rites of the church; on pain of 5 *l.* to the poor, on conviction by confession, or oath of two witnesses, before two justices; and in default of payment in ten days, the same to be levied by the churchwardens or overseers by distress and sale, by warrant of such justices. 13 & 14 *C. 2. c. 4. s. 7.*

Confession.

CONFESSION is twofold, either *express*, or *implied*.

An *express* confession is, where a person directly confesses the crime with which he is charged; which is the highest conviction that can be. 2 *Haw. 333.*

But it is usual for the court, especially if it be out of clergy, to advise the party to plead and put himself upon his trial, and not presently to record his confession, but to admit him to plead. 2 *H. H. 225.*

An *implied* confession is, where a defendant in a case not capital, doth not directly own himself guilty, but in a manner admits it by yielding to the king's mercy, and desiring to submit to a small fine; which submission the court may accept of if they think fit, without putting him to a direct confession. 2 *Haw. 333.*

It seems, that the confession of the defendant taken upon an examination before justices of the peace, or in discourse with private persons, may be given in evidence against the party confessing, but not against others. 2 *Haw. 429.*

All those who on their examination own themselves guilty of a felony alledged against them, and are charged in their *mittimus* with the felony so confessed, seem to be excluded from bail; for bail is only proper where it stands indifferent whether the party be guilty or innocent. 2 *Haw. 97.*

Confes.

Conies. See Game.

Conjuration. See Witchcraft.

Conspiracy.

I. What it is.

II. How punishable.

I. What it is.

BY the common law there can be no doubt, but that all confederacies whatsoever, wrongfully to prejudice a third person, are highly criminal; as were divers persons confederate together by indirect means to impoverish a third person, or falsely and maliciously to charge a man with being the reputed father of a bastard child, or to maintain one another in any matter whether it be true or false. 1 Haw. 190. By the common law.

2. And conspiracy by statute is as follows: *Conspirators are they, that do confederate or bind themselves by oath, covenant, or other alliance, that every of them shall aid and bear the other falsely and maliciously to indict, or cause to indict, or falsely to move or maintain pleas; and such as retain men in the country, with liveries or fees to maintain their malicious enterprises; and this extendeth as well to the takers, as to the givers: And stewards and bailiffs of great lords, who by their office or power, undertake to bear or maintain quarrels, pleas, or debates, that concern other parties than such as touch the estate of their lords or themselves.* 33 Ed. 1. ft. 2. By statute.

From this definition of conspirators, it seems clearly to follow, contrary to the opinion of Lord Coke, that not only those who actually cause an innocent man to be indicted, and also to be tried upon the indictment, whereupon he is lawfully acquitted, are properly conspirators, but that those also are guilty of this offence, who barely conspire to indict a man falsely and maliciously, whether they do any act in prosecution of such conspiracy or not. 1 Haw. 189. L. Raym. 1169.

But an *action* will not lie for the conspiracy, unless it be put in execution; for in such case, the *damage* is the ground of the action. L. Raym. 378.

Also it plainly appears from the words of the statute, that one person alone cannot be guilty of conspiracy, within the purport of it; from whence it follows, that if all the defendants who are prosecuted for such a conspiracy be acquitted but one, the acquittal of the rest, is the acquittal of that one also: And upon the same ground it hath been holden, that no such prosecution is maintainable against a husband and wife only, because they are esteemed but as one person in law. But it is certain, that an action on the case, in the nature of a conspiracy, may be brought against one only: Also, it hath been resolved, that if such an ac-

Constable.

tion be brought against several persons, and all but one be acquitted, yet judgment may be given against that one only. *1 Haw. 192.*

II. How punished.

On action.

1. It is clear, that those who are convicted of conspiracy at the suit of the party, shall have judgment of fine and imprisonment, and to render the plaintiff his damages. *1 Haw. 193.*

On indictment.

2. Also it is certain, that he who is convicted at the suit of the king, of a conspiracy to accuse another of a matter which may touch his life, shall have judgment that he shall lose the freedom and franchise of the law (whereby he is disabled to be put upon any jury, or to be sworn as a witness, or even to appear in person in any of the king's courts), and also that his houses, lands, and goods shall be seized into the king's hands, and his houses and lands stripped and wasted, his trees rooted up, and his body imprisoned. And this is commonly called *villainous* judgment, and is given by the common law, and not by any statute, and is said generally in some books to be the proper judgment upon every conviction of conspiracy at the suit of the king, without any restriction to such as endangered the life of the party; but this point doth not seem to be any where settled. *1 Haw. 193.*

Constable.

THE office of a constable, in executing of warrants, is treated of under the titles *Arrest*, and *Warrant*; and in like manner the other particulars of his duty may be found under the respective titles throughout the book; this title treating only of the office of a constable in general.

I. Of the antiquity and original of constables.

II. Who shall be a constable.

III. How chosen and sworn.

IV. His power as a conservator of the peace.

V. His duty as a subordinate officer to justices of the peace.

VI. His indemnity and protection in his office.

VII. Concerning the expences of his office.

VIII. Concerning his account and removal from his office.

I. Of the antiquity and original of constables.

1. The sundry names of high constables, or constables of lathes, rapes, wapentakes, hundreds, and franchises; and the divers

Antiquity of
constables in
general.

vers names also of petty constables, tythingmen, borsholders, borroheads, headborows, chief pledges, and such other (if there be any) that bear office in towns, parishes, hamlets, tythings, or borows, are all in effect but two, that is to say, *constables* and *borsholders*:

The name of *constable*, is said to be derived of two old Saxon words, *cuning* or *king*, which signifieth king; and *stable*, [*stapul*] *stability*; shewing that these ancient officers were reputed to be as the stability or stay of the king and kingdom. So that the name of constable, in a hundred or franchise, doth mean, that he is an officer, that supporteth the king's majesty in the maintenance of his peace, within the precinct of his hundred or franchise; and he is many times called the *high constable*, in comparison of the constables or *petty constables* that be in towns or parishes within his hundred or franchise; whose part it is likewise to maintain the peace within the several limits of their own towns or parishes. *Lamb. Const.*

But the genuine word seems to be *coonestalle*, or *conestafle*, compounded (by the *Franks*) of *coone* or *cone* strong, and *stalle*, which is also *stafle*, a stand or department; and signifies properly the strong man of the division.

As touching *borsholders* (which is the other general name, and doth contain within it the meaning of tything-men, borrowheads, headborows, thirdborows, and chief pledges) that is made up of these two Saxon words, *borbes* and *ealder*; of the which *borbes* betokeneth pledges, and *ealder* signifieth the *elder*, the *chief*, or the *head*; and *borsholder* in one word doth mean, the chief or head of the sureties or pledges. For the understanding whereof, it is to be remembred, that by the ancient laws of this realm (before the coming in of king *William* the conqueror) it was ordained for the more sure keeping of the peace, and for the better repressing of thieves and robbers, that all free born men should cast themselves into several companies, by ten in each company; and that every of those ten men of the company should be surety and pledge for the forthcoming of his fellows: so that if any harm were done, by any of these ten, against the peace, then the rest of the ten should be amerced, if he of their company that did the harm should fly, and were not forthcoming to answer to that wherewith he should be charged. And for this cause, these companies are yet in some places of *England* called *boroes*, of the said word *borbes*, pledges or sureties; and in other places they are called *tythings*, because they contain (as hath been said) the number of ten men with their families. And even as ten times ten do make an hundred, so because it was then also appointed that ten of these companies should at certain times meet together for their matters of greater weight, therefore that general assembly, or court, was and yet is call a *hundred*. Furthermore, it was then also ordained, that if any man were of so evil credit, that he could not get himself to be received into one of these tythings or boroes, then he should be shut up in prison, as a man unworthy to live at liberty, amongst men abroad. Now whereas every of these tythings or boroes did use to make choice
of

of one man amongst themselves, to speak and to do, in the name of them all; he was therefore in some places called the tything-man, in other places the boroës elder (whom we now call borsholder) in other places the borohead, or headborow, and in some other places the chief pledge, which last name doth plainly expound the other three that are next before it; for head or elder of the boroës, and chief of the pledges, are all one: and in some shires, where every third borow hath a constable, there the officers of the other two are called *thirdborows*. And in these tythings, or boroës, sundry good orders were observed; and amongst others, first, that every man of the age of 12 years should be sworn to the king: Then, that no man shall be suffered to dwell in any town or place, unless he were also received into some such suretyship and pledge as is aforesaid: Thirdly, that if any of these pledges were imprisoned for his offence, then he ought not to be delivered without the assent of the rest of his pledges: Again, that no man might remove out of one tything or boroë, to dwell in another, without lawful warrant in that behalf: Lastly, that every of these pledges should yearly be presented and brought forth by their chief pledge, at a general assembly for that purpose, which we yet in remembrance thereof do call the *view of frankpledge*, or the leet court. *Lamb. Const.*

Antiquity of
high constables.

2. By the statute of *Winchester*, *In every hundred and franchise two constables shall be chosen to make the view of armour; and they shall present defaults of armour, and of suits of towns, and of highways, and such as lodge strangers in uplandish towns, for whom they will not answer.* 13 Ed. 1. ft. 2. c. 6.

And from hence Lord Coke, and others, will have it, that high constables are no ancients than this statute: But Mr. *Hawkins* (agreeably with *Lambard*, *Dalton*, and other authorities) says, that it seems to be the better opinion, that both constables of hundreds, which are commonly called high constables, and also constables of tythings, which are at this day commonly called petty constables, or tythingmen, were by the common law, and not first ordained by the said statute of *Winchester*; for that statute doth not say, that there shall be such officers constituted, but clearly seems to suppose that there were such before the making of it. 2 *Haw.* 61.

In short, the truth of the matter seems to be this: The far greatest part of the business of high constables at this day, is not at all appropriated to them, as high constables; but only as officers to execute the precepts of the justices of the peace, which any other person may do as well as they. The original and proper authority of an high constable, as such, seems to be the very same, and no other, within his hundred, as that of the petty constable within his vill; and therein most probably, he is coeval with the petty constable. The other usual branches of his office, such as the surveying of bridges, the issuing precepts concerning the appointing of overseers of the poor, surveyors of the highways, assessors and collectors of the land tax and window duties, and in like manner the viewing of armour by the abovementioned statute,

statute, are in him, not of necessity, but as matter of convenience, and it is discretionary in the justices whom they will appoint to be their officers in these cases; others have been super-added to their office, for the like reason of convenience, by sundry acts of parliament, such as the issuing precepts for the licensing of alehouses, for levying the county rates, and for returning lists of jurors; for that one person can do all the same much easier and cheaper, than so many different persons.

II. Who shall be a constable.

1. It hath been said, that a custom in a town, that the inhabitants shall serve the office of constable by turns, according to the situation of their several houses, is not good; for that by such a course, it may come to a woman's turn to be constable, as inhabitant of one of those houses; yet we find such customs allowed to be good in later books; and it seems, that the consequence of the reasoning abovementioned may well be denied, since a woman in such case may procure another to serve for her. *2 Haw. 63.* Women.
 2. Apothecaries in *London*, and within seven miles thereof, being free of the company of apothecaries; and also those in the country who have served 7 years apprenticeship, shall be exempted from the office of constable. *6 & 7 W. c. 4.* Apothecaries.
 3. Also it seems certain, that if a sworn attorney, or other officer, of the courts at *Westminster*, be chosen into this office, he may have a writ of privilege for his discharge, by reason of his necessary attendance in those courts: And it hath been resolved, that such officers shall have this privilege, not only where there is no special custom concerning the election of constables, but also where they are chosen by a particular custom, in respect of their estates, or otherwise; for that no such custom shall be intended to be more ancient than the usages of those courts, and therefore shall give way to them. *2 Haw. 63.* Attornies.
 4. And upon the like reasons, it is taken for granted, that practising barristers at law, and the servants of members of parliament, have the same privilege; but there seem to have been no resolutions to this purpose. *2 Haw. 63.* Barristers at law; servants to members of parliament.
 5. Also it hath been resolved, that an alderman of *London*, for the like reasons, is not compellable to be a constable. *2 Haw. 63.* Alderman of London.
 6. But it hath been holden, that a captain of the king's guards, being presented to serve as constable, in pursuance of a custom in respect of his lands in a town, cannot claim this privilege; for that notwithstanding he is bound by his office to personal attendance on the king's person, yet such office being of late institution, shall not prevail against an ancient custom. *2 Haw. 63.* Captain of the guards.
 7. Also it seems, that a practising physician, being chosen constable in pursuance of such custom, has no remedy for his discharge; for that there are no precedents of this kind, and his calling is private. *2 Haw. 63.* Physician.
- But by the *32 H. 8. c. 40.* The president, commons and fellows of the faculty of physick in *London*, shall not be chosen constables.

Where there are others sufficient.

8. Yet if such an officer as before mentioned, or a gentleman of quality who hath no such office, or a practising physician, be chosen constable of a town, which hath sufficient persons besides to execute this office, and no special custom concerning it; perhaps he may be relieved by the king's bench: but it seems that even a custom cannot exempt fitting persons from serving the office of constable, where there are not sufficient besides them to execute it. But these points seem not to be settled. 2 *Haw.* 63.

Dissenting teachers.

9. By the 1 *W. c.* 18. *f.* 11. Every teacher or preacher in holy orders, or pretended holy orders, in a congregation tolerated by law, shall from the time of his subscription and taking the oaths, be exempted from the office of constable.

Prosecutors of felons.

10. And by 10 & 11 *W. c.* 23. *f.* 2, 3. The prosecutor of a felon to conviction, or person to whom he shall assign the certificate thereof, shall be discharged from the office of constable.

Whether he may appoint a deputy.

11. Inasmuch as the office of a constable is wholly ministerial, and no way judicial, it seems, that he may appoint a deputy to execute a warrant directed to him, when by reason of sickness, absence, or otherwise, he cannot do it himself; yet it doth not seem to be settled, that a constable can make a deputy, without some special cause. 2 *Haw.* 62.

And the superior must be answerable for his deputy, upon any miscarriage; unless the deputy is duly allowed and sworn; for then he is constable. *Wood* 145.

Dissenters appointing a deputy.

12. And by 1 *W. c.* 18. *f.* 7. If any person dissenting from the church of *England*, shall be chosen constable, and shall scruple to take upon him the office, in regard of the oaths, or any other matter required to be done in respect of such office; he may execute it by a sufficient deputy by him to be provided, to be allowed by such persons, and in such manner, as such officer should have been allowed.

III. How chosen and sworn.

By whom to be chosen.

1. It being said in some books, that both high and petit constables are to be chosen and appointed by the sheriff in his torn (or by the lord of the leet); and by others, that they are to be chosen by the decennary, it seems difficult to determine, to whether of them the power of chusing doth of right belong. 2 *Haw.* 62.

By whom to be sworn.

2. Yet it seems clear, that whether a constable be to be chosen by the sheriff, or decennary, yet he is to be sworn and placed in his office by the sheriff, as being judge of the court (or by the lord of the leet). 2 *Haw.* 62.

Custom of chusing.

3. Also it seems certain, that a custom for chusing a constable either way is good; and it seems to have been the opinion of the makers of the act of 13 & 14 *C.* 2. hereafter following, that the lords of the courts leet have this power of common right, and consequently the sheriff in his torn, where there is no court leet. 2 *Haw.* 63.

Chusing high constables.

4. But now the usual manner is, that the high constables of hundreds be chosen either at the sessions, or by the greater number

ber of the justices of the division ; and likewise that they be sworn at sessions, or by warrant from the sessions ; which course hath been often allowed and commended by the justices of assize. *Dalt. c. 28.*

And the reason thereof may be this, as hath been intimated above ; namely, that their office at present doth not so much consist in executing the office of high constable as such, as in executing the justices precepts, which they may do for the most part, whether they be indeed high constables or not.

5. And moreover, every petty constable, being a principal peace officer, and it being necessary for the preservation of the peace, that every vill should be furnished with one ; the justices of the peace have ever since the institution of their office, taken upon them as conservators of the peace, not only to swear the petty constables, which have been chosen at a torn or leet, but also to nominate and swear those who have not been chosen at any such court, on the neglect of the sheriffs or lords to hold their courts, or to take care that such officers are appointed in them. And this power of justices of the peace having been confirmed by the uninterrupted usage of many ages, shall not now be disputed, but shall be presumed to have been grounded on sufficient authority. And some have carried this point so far, as to allow the justices at their sessions, to swear one who was chosen at the leet, and unduly rejected by the steward, who had sworn another in his place. *2 Harw. 65.*

Petty constables appointed by justices of the peace.

6. However it is certain, that justices of the peace had power to nominate and swear constables, on the default of the torn or leet, before the statute of 13 & 14 C. 2. c. 12. and therefore, that they have such authority in some cases not mentioned in that statute ; which enacts, that if a constable shall die, or go out of the parish, or continue above a year in his office, any two justices may make and swear a new one, until the lord shall hold a leet, or till the next sessions, who shall approve of the officer so made and sworn, or appoint another. *2 Harw. 65.*

Where the leet shall make default.

7. And it seems to be clear at this day, that the king's bench hath power by *mandamus* to compel the court or judge to swear a constable duly chosen. *2 Harw. 65.*

Mandamus to compel the swearing a constable.

8. Constables lawfully chosen, if they shall refuse to be sworn, a justice of the peace may bind them over to the assizes or sessions. *Dalt. c. 28.*

Constable refusing to be sworn.

9. But it seemeth that the sheriff, or steward of the leet, cannot lawfully commit them for such refusal, without more ; but it is said, that if the party be present in the court, he may be fined ; and that if he be absent, and have a certain time and place appointed him by the sheriff or steward, for the taking of the oath before a justice of the peace, and have also express notice of such appointment, and be presented at the next court, for having refused to take it accordingly, he may be amerced : also it seems, that in either case he may be indicted (A) either at the assizes or sessions. And it is advisable in all pleadings, in any action concerning such a fine or amercement, and in all indictments for such refusal, specially and expressly to set forth the manner of every

How punished.

every such election, appointment, notice, and refusal, and before whom the court was holden: and it hath been adjudged, that it is insufficient to say in general, that the party was duly elected, or lawfully elected, or that he had notice, without setting forth the special circumstances thereof. Also it is said to have been adjudged, that an indictment for not finding a sufficient person to serve the office of constable, without shewing that the party refused to serve it himself, is insufficient. 2 Haw. 64.

Constable's oath.

10. There is a long form of a constable's oath in *Dalton*, which is adopted by Mr. *Barlow*, expressing his duty in many instances; but as that form nevertheless doth not contain the hundredth part of the constable's duty, nor indged the most material instances of it, it may be more eligible (as no particular form is directed by any statute) to swear him (B) to the due execution of his office in general, than to descend to those particulars; lest by mentioning some parts of his duty, and not others, he may be induced to think, that those others are not so necessary.

Oaths of allegiance and supremacy.

11. By the 1 G. 2. c. 13. High constables are to take the oaths of allegiance, supremacy, and abjuration, and receive the sacrament, as other persons who qualify for offices; but petty constables are exempted.

IV. His power as a conservator of the peace.

Constable a conservator of the peace.

May commit for an affray in his presence.

1. Every high and petty constable are by the common law conservators of the peace. 2 Haw. 33. *Crom.* 6. *Dalt.* c. 1.

2. And therefore if any man shall make an affray or assault upon another in the presence of the constable, or shall threaten to kill, beat, or hurt another, or shall be in a fury ready to break the peace; the constable may commit him to the stocks, or other safe custody for the present, and after may carry him before a justice, or to gaol, until he shall find surety for the peace, which surety the constable himself may also take by obligation, to be sealed and delivered to the king's use, and if the party will not find surety to the constable, he may imprison the party until he shall do it. *Dalt.* c. 1.

But not when he is absent.

3. But he may not require surety of the peace, unless the offence be upon his own view, and not if it be committed out of his sight; for he cannot take any man's oath that he is afraid of death, because he is not a judge of record; which is the reason that an obligation taken by him, shall be in his own name, and not in the king's name: and the same shall be certified at the sessions of the peace. *Cro. Eliz.* 375, 376.

V. His duty as a subordinate officer to justices of the peace.

Subordinate to the justices of the peace.

It hath been always holden, that the constable is the proper officer to a justice of the peace, and bound to execute his warrants; and therefore it hath been resolved, that where a statute authorizes a justice of the peace to convict a man of a crime, and to levy the penalty by warrant of distress, without saying to whom

whom such warrant shall be directed, or by whom it shall be executed, the constable is the proper officer to serve such warrant, and indictable for disobeying it. 2 Haw. 62.

VI. His indemnity and protection in his office.

1. If an action is brought against a constable, for any thing done by, virtue of his office; he, and also all others which in his aid, or by his command, shall do any thing concerning his office, may plead the general issue, and give the special matter in evidence, and if he recovers, he shall have double costs. 7 J. c. 5.

2. And such action shall be laid in the county where the fact was committed, and not elsewhere. 21 J. c. 12.

3. Formerly the constable was bound to take notice of the jurisdiction of the justice; insomuch that if the justice issued a warrant in any matter wherein he had no jurisdiction, the constable was punishable for the execution of it: but now, by the statute of 24 G. 2. c. 44. it is enacted;

No action if he delivers a copy of the warrant.

That no action shall be brought against any constable, or other person acting by his order, and in his aid, for any thing done in obedience to the warrant of a justice of the peace, until demand hath been made, or left at the usual place of his abode, by the party, or by his attorney, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for 6 days after such demand: and if after compliance therewith, any such action shall be brought, without making the justice who signed such warrant defendant, on producing and proving such warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice. And if such action be brought jointly against the justice and constable; on proof of such warrant, the jury shall find for the constable, notwithstanding such defect of jurisdiction as aforesaid; and if the verdict be given against the justice, the plaintiff shall recover his costs against him, to be taxed in such manner by the proper officer, as to include such costs as the plaintiff is liable to pay to such defendant, for whom such verdict shall be found as aforesaid. S. 6.

Note, by this it seemeth, that the constable ought not to return the warrant to the justice, but to keep it for his own justification; for he cannot grant to the party the perusal of the warrant, unless he hath it: but he must certify to the justice what he hath done in the execution thereof.

4. And no action shall be brought against any constable, but within 6 months after the act committed. 24 G. 2. c. 44. s. 8.

No action but within 6 months.

5. And if the constable is assaulted in the execution of his office, he need not go back to the wall, as private persons ought to do; and if in the striving together, the constable kills the assailant, it is no felony; but if the constable is killed, it shall be construed premeditated murder. Hale's Pl. 37. 1 H. H. 457.

Constable assaulted need not go back to the wall.

VII. Concerning

VII. Concerning the expences of his office.

Charges of making distresses.

1. By the 27 G. 2. c. 20. The constable executing a justice's warrant, for levying a penalty, or other sum of money directed by any act of parliament, by distresses, may deduct his own reasonable charges of taking, keeping, and selling the goods distrained; returning the overplus on demand, after such penalty or sum of money and charges deducted.

Charges of conveying an offender to gaol.

2. A person committed to gaol, for any misdemeanour, shall bear his own charges (if able) for conveying or sending him to the said gaol, and the charges of those that guard him thither; and if he shall refuse at the time of commitment to defray the same, or shall not then pay the same, the justice committing him, shall by warrant to the high or petty constable where the person shall inhabit, or from whence he shall be committed, or where he shall have any goods within the county, order so much to be sold thereof, as by his discretion shall satisfy the same; the appraisement to be made by four honest inhabitants. 3 J. c. 10. s. 1.

And if he have not money nor goods within the county, sufficient to bear the charges of himself and of those who convey him to the gaol, or house of correction, the constable may make application to a justice, who may upon oath examine into and ascertain the reasonable expences, and shall by his warrant (without fee) order the treasurer to pay the same; except in *Middlesex*, where the same shall be paid by the overseers of the parish where the person was apprehended. 27 G. 2.

Charges about vagrants.

3. And by the 13 & 14 C. 2. c. 12. it is enacted, that whereas constables may be at great charge in relieving, conveying with passes, and in carrying rogues, vagabonds, and sturdy beggars to the house of correction, and have no power to make rates to reimburse themselves; therefore the said constables, together with the churchwardens and overseers, and other inhabitants shall make a rate in like manner as the poor rate by the 43. E. 1. c. 2. which being confirmed under the hands and seals of two justices, may be levied by distresses.

Mr. *Nelson* and Mr. *Shaw* say, that this rate may be made for the purpose abovementioned, and for other parish charges; and direct five different forms of instruments to compel the payment thereof, setting forth therein generally, that the rates are to be made and levied for reimbursing the constable's necessary charges in the execution of his office. But there seems to be no such power given by the statute; for it is limited to expences about vagrants only; and even that seems to be rendered useless, by the vagrant act of 17 G. 2. which orders the said expences to be paid out of the general county rate.

Neither is any such power given by any other statute; which indeed is hard upon the constable. It is but reasonable, that the justices should have power given by some act of parliament, to allow to the constable in all cases a competent satisfaction for his trouble:

trouble: for there seemeth to be no cause, why a constable who hath himself been guilty of no crime, should be at much trouble and expence about those who have, and have no compensation for it.

VIII. Concerning his account and removal from his office.

1. The high constables shall at the general or quarter sessions, Account. if thereunto required, account for the general county rate by them received; on pain of being committed to gaol until they shall account; and shall pay over the money in their hands, according to the order of the said court, on the like pain: And all their accounts and vouchers shall, after having been passed at the said sessions, be deposited with the clerk of the peace, to be kept amongst the records, and inspected by any justice without fee. 12 G. 2. c. 29. s. 8.

2. And in such manner as constables are to be chosen, in the Removal. same manner, and by the like authority are they to be removed; so as if there shall be cause to remove and put an high constable from his place, it hath not been thought fit, that any one or two justices should do it upon their discretion, but that it should be done by the greater part of the justices of that division, and that for some just cause; or else that it be done at the sessions. *Dalt.* c. 28.

And it seems clear, that the sheriff, or steward of the leet, having power to place a constable in his office, have by consequence a power of removing him. 2 *Haw.* 63.

And also the justices of the peace have always used, for good cause, to displace all such constables, as have been chosen and sworn by them. 2 *Haw.* 65.

And by the 13 & 14 C. 2. c. 12. If a constable shall continue above a year in his office, the sessions may discharge him, and put another in his place, till the lord shall hold a leet. S. 15.

And if the court, or other judge, shall refuse to discharge a constable, the king's bench may compel them by *mandamus*. 2 *Haw.* 65.

A. Indictment for not taking the office.

THE jurors &c. upon their oath present, that A. O. late of _____ in the township of _____ in the said county, yeoman, on the _____ day of _____ in the _____ year of the reign of _____ and long before, and always after until the day of the preferring of this indictment, was and is an inhabitant and residing within the township of _____ aforesaid in the said county, and an able person to serve the office of constable for the same township; and he the said A. O. on the said _____ day of _____ in the year aforesaid, in the township aforesaid, lawfully and in due manner was elected and chosen by _____ ancient inhabitants of the same township, according to the ancient custom of choosing constables

Conviction.

for the said township, into the office of constable for the said township of ——— in the said county, for one year from thence next following, to do and execute all and singular those things which belong to the office of constable; and that the said A. O. afterwards, to wit, on the ——— day of ——— in the year aforesaid, at the township of ——— aforesaid in the said county, had due notice thereof, and then and there was required to appear before J. P. esquire, then and yet one of his majesty's justices assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, on the said ——— day of ——— in the year aforesaid, to take his oath for the due executing the said office of constable for the same township, according to the duty of that office; nevertheless the said A. O. his duty in that behalf not regarding, but contriving and intending wholly to neglect to serve the said office of constable, after he the said A. O. was so elected and chosen into the said office as aforesaid, to wit, on the said ——— day of ——— in the year aforesaid, and continually afterwards until the day of taking this inquisition, at the township aforesaid in the said county, unlawfully and contemptuously did refuse, and still doth refuse, to take his said oath for the due executing the said office of constable, and in any wise to execute the same office, to the great hindrance of justice, in contempt of our said lord the king, and to the evil example of all others in the like case offending, and against the peace of our said lord the king.

B. Constable's oath.

YOU shall well and truly serve our sovereign lord the king [and the lord of this leet, if sworn in a court leet] in the office of constable, for the township of ——— for the year ensuing [or, until you shall be lawfully discharged therefrom; or, until another shall be sworn in your place:] You shall well and truly do and execute all things belonging to the said office, according to the best of your skill and knowledgde: So help you God.

Conviction.

To be founded
on an informa-
tion.

Summons.

1. **A** Conviction ought to be, on an information or complaint precedent. L. Raym. 510.

2. Where a justice makes a conviction in a summary way, a summons is necessary; and therefore upon a complaint made, the justice must summon the party to appear, and if he makes default, then he may proceed. 1 Salk. 181.

Whether neces-
sary to set forth
the summons in
the conviction.

3. But generally it is not necessary to set forth the summons in the conviction; for altho' no summons is set forth, yet the court will intend one: but where a summons is set forth, and that summons appears to be irregular, the court will quash the conviction, there

there being then no room to intend any other summons. 11 G. K. and Venables. *Sess. C. V.* 1. 210.

4. Convictions ought to be certain, and not taken upon collection. L. Raym. 510.

Conviction to be certain.

5. A conviction ought to be in the present tense, and not in the time past. L. Raym. 1376.

Conviction to be in the time present.

6. A conviction for deer-stealing was quashed, because the informer was the witness; divers convictions having been quashed for the same reason before. L. Raym. 1545.

Not to be on the oath of the informer.

7. On a suggestion that the defendant hath a title to the thing in question, a prohibition will be granted by the king's bench, before or after conviction, to stay the justice from proceeding; for without doubt if the defendant have but a colour of title, the justices have no jurisdiction in the cause; as where the defendant was convicted for cutting trees, where he had a right of common. L. Raym. 901.

Not to be where the title is in question.

8. In convictions by justices of the peace in a summary way, where the ancient course of proceeding by indictment and trial by jury is dispensed with, the court may more easily dispense with forms; and it is sufficient for the justices, in the description of the offence, to pursue the words of the statute; and they are not confined to the legal forms requisite in indictments for offences by the common law: for tho' all acts, which subject men to new and other trials than those by which they ought to be tried by the common law, being contrary to the rights and liberties of *Englishmen*, as they were settled by *Magna Charta*, ought to be taken strictly; yet when such a statute is made, one ought to pursue the intent of the makers, and expound it in so reasonable a manner, as that it may be executed. L. Raym. 581, 582.

What strictness is necessary in convictions.

9. And it seemeth, that a conviction on a penal statute ought expressly to shew, that the defendant is not within any of its provisoes; for since no plea can be admitted to such a conviction, and the defendant can have no remedy against it, but from an exception to some defect appearing in the face of it, and all the proceedings are in a summary manner, it is but reasonable that such a conviction should have the highest certainty, and satisfy the court, that the defendant had no such matter in his favour, as the statute it self allows him to plead. 2 *Haw.* 250.

Whether it must shew that the defendant is not within the provisoes.

10. Altho' in indictments and informations one ought to conclude against the peace, yet in summary convictions there is no need to pursue so strictly the forms of law, and they are well enough without such conclusion. L. Ray. 583.

Whether it ought to conclude against the peace.

Form of a conviction.

Westmorland. **B**E it remembred, that on the ——— day of ——— in the ——— year of the reign of ——— by the grace of God, of Great Britain, France and Ireland, king, defender of the faith, and so forth, at ——— in the county of ——— aforesaid, A. I. of ——— cometh before me J. P. esquire, one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in the said county, and

Conviction.

also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, [residing near to the place where the offence herein after mentioned was committed; or as the statute requires] and giveth me the said justice to understand and be informed, that one A. O. of ——— in the said county, yeoman, on the ——— day of ——— now last past, at ——— in the said county, did [here set forth the fact, in the words of the statute as near as may be] Whereupon the said A. O. after being duly summoned in this behalf, on the ——— day of the said month of ——— at ——— before me the said J. P. appearing and being present, in order to make his defence against the said charge contained in the said information, and having heard the same, he the said A. O. is asked by me the said justice, if he can say any thing for himself why he the said A. O. should not be convicted of the premisses above charged upon him in form aforesaid; who pleadeth that he is not guilty of the said offence; but the same being now fully and duly proved upon the oath of A. W. a credible witness, it manifestly appears to me the said justice, that the said A. O. is guilty of the premisses above charged upon him in the said information. It is therefore adjudged by me the said justice, that he the said A. O. be convicted, and he is hereby convicted of the premisses aforesaid; and that he the said A. O. hath forfeited the sum of ——— of lawful money of Great Britain for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made. Given, &c.

If he confesses the fact, then say ——— And because the said A. O. hath nothing to say, nor can say any thing in his own defence touching and concerning the premisses aforesaid, but doth of his own accord freely and voluntarily acknowledge and confess all and singular the said premisses to be true, in manner and form as the same are charged upon him in the said information; and because, all and singular the premisses being heard and fully understood by me the said justice, it manifestly appears to me ——— Or, if the party hath been summoned, and doth not appear, then say, ——— Whereupon, on the said ——— day of ——— in the year aforesaid, at ——— aforesaid, in the county aforesaid, he the said A. O. after being duly summoned in this behalf, to appear before me, in order to make his defence against the said charge contained in the said information, doth neglect to appear before me, and doth not appear, nor make any defence against the said charge as aforesaid; Therefore I the said justice, on the said ——— day of ——— in the year aforesaid, at ——— aforesaid, in the county aforesaid, do proceed to examine into the truth and matter of the said complaint, and the same being now fully and duly proved before me upon the oath of A. W. a credible witness, it manifestly appeareth unto me, that the said A. O. is guilty of the premisses charged against him in the said information. It is therefore considered by me the said justice, &c.

Note; By reason of the difficulty in framing a conviction of this sort, a more short and easy method is prescribed in many cases by divers statutes, which are inserted under their respective titles.

Corn.

For the forestalling, ingrossing, or regrating of corn; see title **Forestalling**.

I. The measure of corn.

II. Licensing badgers of corn.

III. The offences of cutting corn growing, and of burning stacks of corn.

IV. Exportation of corn.

V. Importation of corn.

I. The measure of corn.

1. **T**O buy or sell corn in the sheaf, before it is threshed and measured, is against the common law of *England*; and the reason thereof seemeth to be, for that by such sale the market is in effect forestalled. 3 *Inst* 197. Buying corn in the sheaf without measuring.

2. If any person shall sell corn otherwise than by *Winchester* measure, sealed and stricken by the brim, he shall forfeit 40s. on conviction before one justice, on the oath of one witness; to be levied by the churchwardens and overseers, or some of them, to the use of the poor, by distress and sale. In default of distress, imprisonment till paid. 22 C. 2. c. 8. s. 2. Penalty of selling otherwise than by Winchester measure.

And if any mayor, or other head officer, shall knowingly permit the same, he shall, upon conviction thereof at the county sessions, forfeit 5*l.* half to the prosecutor, and half to the poor, by distress and sale; for want of distress, to be imprisoned by warrant of the justices, till payment be made. S. 3.

3. And moreover, every person who shall sell or buy corn, without measuring, being thereunto required, or in any other manner than is by the 22 C. 2. c. 8. directed, and that without shaking of the measure by the buyer, he shall, beside the penalty of that act, forfeit all the corn so bought or sold, or the value thereof, to the party complaining. 22 & 23 C. 2. c. 12. s. 2. Further penalty.

And on complaint made to a justice of the peace, that corn hath been bought, sold, or delivered contrary to this act, the proof shall lie upon the defendant, to make it appear by the oath of one witness, that he sold or bought the same lawfully; wherein if he shall fail, he shall forfeit as is said before, to be levied by distress and sale; which shall by the justice be distributed, half to the poor, and half to the informer. 22 & 23 C. 2. c. 12. s. 3.

4. But notwithstanding all the statutes that have been made, for the uniformity of measures throughout the realm, yet the measure of corn differs in many places, the bushel being greater in one place than in another. And altho' regularly, a custom or pre-

Difference of measures.

scription against a statute is void, except it be confirmed by the statute, or saved by another statute; yet it is said, that in the measure of corn, the custom of the place is to be observed, if it be a custom beyond all memory, and used without any visible interruption. *Barl.* 578.

II. *Licensing badgers of corn.*

Who may be licensed to be a badger.

1. No badger, lader, kiddier, carrier, buyer, or transporter of corn or grain shall be licensed (A) but only such who is or hath been a married man, and is an householder, and not an household servant, nor retainer to any person, and of the age of 30 years at the least. *5 El. c. 12. f. 4.*

In sessions only.

2. And he shall be licensed only in the open sessions of the shire where he hath dwelt for 3 years last past. *5 El. c. 12. f. 4.*

Date and signing.

3. Which licence shall bear date of the day and place where the sessions is holden, and shall be signed and sealed, by 3 justices at such sessions, one being of the *Quorum*. *5 El. c. 12. f. 5.*

Recognizance to pursue the licence.

4. And the justices at such sessions may take recognizance (B) that the person licensed shall not by colour thereof forestall or ingross, or do any thing contrary to the act against forestalling, ingrossing, and regrating, of the *5 & 6 Ed. 6. c. 14.* *5 El. c. 12. f. 6.*

Fee to the clerk of the peace.

5. And the licence and recognizance shall be written by the clerk of the peace, or his deputy, and no other person; for which, he shall have *12d.* for the licence, and *8d.* for the recognizance, and for registering them both *4d.* For which fee, he shall also keep a register book, and therein enter the names and dwelling places of the persons licensed, with a brief declaration of the licence, and of the day, time, and place when granted: which book he shall have at the sessions. *5 El. c. 12. f. 6.*

How long the licence shall continue.

6. And such licence shall be only of force for one year. *5 El. c. 12. f. 4.*

Penalty of being licensed otherwise.

7. Any person taking licence contrary hereto, shall forfeit to the king *5l.* and the licence shall be void. *5 El. c. 12. f. 5.*

Not to buy out of the market.

8. And no person, by authority of such licence, shall buy corn out of open fair or market, to sell again, unless he be thereunto particularly licensed, and have special and express words in the licence, that he may so do; on pain of *5l.* half to the king, and half to him that will sue. *5 El. c. 12. f. 7.*

Sessions may determine.

9. And the sessions may hear and determine the offences aforesaid, by inquisition, presentment, bill, or information, and by examination of two witnesses, and make process thereupon, as upon indictment, and estreat the king's moiety, and award execution of the other moiety to the party, by *fieri facias*, or *capias*, as the courts at *Westminster* may do. *5 El. c. 12. f. 8.*

Not to extend to corporations.

10. But nothing of all this shall extend to prejudice the liberty of a city, or town corporate, but that they may license purveyors for the provision thereof, as before this act. *5 El. c. 12. f. 9.*

Not to extend to certain counties.

11. Also it is provided, that this shall not extend to the counties of *Westmorland*, *Cumberland*, *Lancaster*, *Chester*, and *York*; but

but that they may do as heretofore they have lawfully used to do.
5 El. c. 12. f. 10.

But by a general clause in the statute of the *13 El. c. 25. f. 20.* these other counties seem now to be included; which enacts, that no person or persons (without any exception as to particular counties) shall be a buyer, badger, kidder, or carrier of corn, in other manner than is contained in the statute made in the *5 El. c. 12.* nor shall be any other ways admitted or licensed to be a buyer, badger, kidder, or carrier as aforesaid, than is mentioned and appointed by the said statute.

III. The offences of cutting corn growing, and of burning stacks of corn.

1. Every person who shall unlawfully cut or take away any Cutting corn growing.
 corn or grain growing, being convicted thereof by confession, or oath of one witness, before one justice, shall for the first offence pay such damages as the justice shall appoint: and if the justice shall think him not able or sufficient, or if he do not pay such damages, he shall commit him to the constable where the offence is committed, or where the party is apprehended, to be whipped; and for every other offence he shall in like manner be whipped. The constable refusing, shall be committed by the justice, till he conform. *43 El. c. 7.*

But if he cut it at one time, and then come again at another time and take it away, it is felony. *1 Haw. 93.*

2. If any person shall, in the night time, maliciously and wil- Burning corn in the night.
 lingly burn or cause to be burnt, any rick or stack of corn, he shall be guilty of felony: but to avoid judgment of death, he may make his election to be transported for 7 years. And 3 justices (*1 Q.*) may determine the same. *22 & 23 C. 2. c. 7.*

3. But by the *9 G. c. 22.* commonly called the Black act, Burning by night or day.
 which is inserted more at large in the title of that name, and which by the last continuance is to be of force till *Sep. 1. 1757, &c.* If any person shall set fire to any mow or stack of corn, he shall be guilty of felony without benefit of clergy. *S. 1.*

And the hundred shall answer the damages, not exceeding *200 l.* *S. 7, 8, 9, 10.*

And if any person shall apprehend, or cause to be convicted, such offender, and shall be killed, or wounded so as to lose an eye, or the use of any limb, in apprehending or endeavouring to apprehend such offender, on proof thereof at the sessions, and certificate thereof from thence, the sheriff shall pay to the person intitled the sum of *50 l.* in 30 days, to be repaid to him out of the treasury. *S. 12.*

IV. Exportation of corn.

1. The king may at any time, by proclamation, prohibit the The king may prohibit by proclamation.
 exportation of corn generally, or out of any special ports by name, for such time as shall be therein limited. *1 J. c. 25. f. 27.*

Duty on exportation taken off.

2. No duty or subsidy whatsoever shall be paid on the exportation of wheat, rye, barley, malt, beans, pease, or other grain, bread, biscuit, or meal. 11 & 12 W. c. 20. f. 4.

Bounty on exportation.

3. But when malt or barley are at or under 24 s. a quarter, rye 32 s. wheat 48 s. every person exporting the same in *English* shipping, shall have from the officers of the customs, for every quarter of barley or malt exported (ground or unground) 2 s. 6 d. of rye 3 s. 6 d. of wheat 5 s. 1 W. c. 12. And of wheat malt 5 s. 5 An. c. 29. f. 15.

And by 5 An. c. 8. art. 6. & ch. 29. f. 10. when oats do not exceed 15 s. a quarter, a bounty of 2 s. 6 d. a quarter shall be paid for oatmeal exported.

Penalty of hindring exportation.

4. And if any person shall wilfully and maliciously beat, wound, or use any other violence to any person, with intent to hinder him from buying corn in any market or other place; or shall unlawfully stop or seize upon any waggon, cart, or other carriage, or horse, loaded with wheat, flour, meal, malt, or other grain, in or on the way to or from any city, market town, or sea port, and wilfully and maliciously break, cut, separate, or destroy the same, or any part thereof, or the harness of the horses drawing the same; or shall unlawfully take off, drive away, kill, or wound any of such horses; or unlawfully beat or wound the driver; or shall by cutting of the sacks, or otherwise, scatter or throw abroad such wheat, flour, meal, malt, or other grain, or shall take and carry away, spoil, or damage the same, or any part thereof: every such person, being convicted thereof, before two justices or the sessions, shall be sent to the gaol or house of correction, for any time not exceeding three months, nor less than one month, and be once publicly and openly whipped by the master of such gaol or house of correction, in such city, market town, or sea port, in or near which the offence shall be committed, on the first convenient market day, at the market cross, or market place there, between the hours of 11 and 2. 11 G. 2. c. 22. f. 1.

And if any such person so convicted, shall commit any of the offences aforesaid a second time; or if any person shall wilfully and maliciously pull down, throw down, or otherwise destroy any storehouse, or granary, or other place where corn shall be then kept in order to be exported; or shall unlawfully enter any such storehouse, granary, or other place, and take and carry away any corn, flour, meal, or grain therefrom, or otherwise spoil or damage any meal, flour, wheat, or grain therein, intended for exportation: every person so offending, and being thereof lawfully convicted, shall be adjudged guilty of felony, and be transported for 7 years. S. 2, 3.

And the hundred shall be liable to answer damages (not exceeding 100 l.), to be sued for and levied as in cases of robbery; the person injured giving notice of the offence in two days, by himself or servant, to a constable of the hundred, or the constable of the place in or near which the fact shall be committed; and within ten days after such notice, giving in the examination on oath of himself, or of his servant present at the time of the fact, or having the care of such his property, before a justice of the peace, whether

whether he knows the persons that committed the fact, or any of them; and if he confesses that he does, then the person so confessing, entring into recognizance to prosecute. 11 G. 2. c. 22. s. 5, 6.

But if an offender is convicted in 12 months, the hundred shall not be liable; and therefore the action must not be brought till after one year: nor shall it be commenced but within two years. S. 7, 8.

Note; It is proper here to take notice of a very odd mistake in some of the books, relating to an act made in the 14 G. 2. c. 3. by reason of which act one author asserts, that the statute last recited is of little use, because that now by the said statute of 14 G. 2. *no corn can be exported*: and another says, that by the said statute of 14 G. 2. *no corn shall be exported after Dec. 15. 1741*. And the mistake is no other than this; that instead of *after Dec. 15.* the statute says, *before Dec. 15. 1741*, none shall be exported; and the reason was, because at that time there was great scarcity of corn in the nation. To which may be added, that other books take no notice of either the one act or the other; perhaps from the above supposition, that the one act renders the other useless: by which it may seem, that the publishers of the new editions do not always bring down the alterations from the statutes themselves, but quote from one another.

V. Importation of Corn.

1. When corn doth not exceed the following prices, the custom and poundage for corn imported shall be as follows: wheat not above 53 s. 4 d. a quarter, shall pay 16 s. if above 53 s. 4 d. and not above 4 l. it shall pay 8 s. rye not above 40 s. a quarter, shall pay 16 s. barley and malt not above 32 s. a quarter, shall pay 16 s. buck wheat not above 32 s. a quarter, shall pay 16 s. oats not above 16 s. a quarter, shall pay 5 s. 4 d. pease or beans not above 40 s. a quarter, shall pay 16 s. 22 C. 2. c. 13. s. 1.

But when the prices exceed these rates, then the duties payable before this act, shall only be paid, *id.* s. 2. That is to say, for every quarter of wheat imported, 5 s. 4 d. of rye 4 s. barley or malt 2 s. 8 d. buck wheat 2 s. oats 1 s. 4 d. pease or beans 4 s. 15 C. 2. c. 7. s. 3.

2. And that it may be known what price corn bears where such foreign corn is imported, the justices of the peace for the counties where foreign corn is imported, shall at every their quarter sessions give in charge to the grand jury to make enquiry and presentment upon their oaths, of the common market prices of the several sorts of middling *English* corn, as the same shall be commonly bought and sold in the county; which presentment shall be certified by the justices to the chief officer and collector of the customs at the port where the corn is imported, to be hung up in some publick place in the custom house. But this shall not extend to the city of London. 5 G. 2. c. 12. s. 1, 2, 3, 4.

3. And for preventing the fraudulent importation of foreign corn, no warrant shall be allowed for carrying forth to sea, any Fraudulent importation.

any other port, any foreign corn after importation; and no person shall carry forth the same, or procure it to be shipped for that purpose, on pain of forfeiting the same, and also 20s. for every bushel, and also the ship, with all her guns, tackle, and furniture; half to the king, and half to him who shall sue in any court of record. And the master and mariners, knowingly assisting therein, shall be imprisoned for three months. 5 G. 2. c. 12. s. 5.

A. Licence for a badger of corn.

Westmorland **A**T the general quarter sessions of the peace held at _____ for the county aforesaid, the _____ day of _____ We A. B. C. D. and E. F. esquires, justices of the peace for the said county (one whereof is of the Quorum) have licensed, and by these presents do license and admit G. H. of _____ being upwards of 30 years of age, and also being a married man, and an householder, and having been an inhabitant in the said county for 3 years last past, to be a common badger, carrier, buyer and seller of corn and grain in any market or fair whatsoever, and the same to convert into meal, and to carry to, and vend the same in any fair or market, from time to time, and at all times for and during the space of one whole year, from the date hereof; so as he do use and follow the said business, according to the true intent and meaning of the statutes in that case made and provided against regrators, forestallers, and ingrossers, and not otherwise. Given under our hands and seals the day and year first aboveswritten.

B. Condition of the recognizance.

_____ that he shall not forestall, or ingross, or do any thing contrary to the true meaning of the statutes made against regrators, forestallers, and ingrossers, or any thing therein contained.

Coroner.

Coroner.

CORONERS are ancient officers by the common law, so called because they deal principally with the pleas of the crown, and were of old time the principal conservators of the peace. 2 *Haw.* 42.

Concerning whom I shall shew,

I. Who may be a coroner.

II. How chosen.

III. His power and duty in taking an inquisition of death.

IV. His power and duty in other matters.

V. His fees.

VI. Punishment for not doing his duty.

I. Who may be a coroner.

1. Of ancient time this office was of great estimation; for none could have it under the degree of a knight. 3 *Ed.* 1. c. 10. Dignity.
4 *Inst.* 271.

2. And by the 14 *Ed.* 3. §. 1. c. 8. No coroner shall be chosen unless he have land in fee, sufficient in the same county, whereof he may answer to all manner of people. Estate.

II. How chosen.

1. The coroner (as of ancient time the sheriffs and conservators of the peace) shall be chosen in full county, that is, in the county court, by the commons of the same county. 28 *Ed.* 3. c. 6. To be chosen in the county court.

And this must be in pursuance of the king's writ for that purpose, issuing out of, and returnable into the chancery; and none but freeholders have a voice at such election, for they only are suitors to the county court. 2 *Haw.* 43, 44.

2. And being elected by the county, if he be insufficient, and not able to answer such fines and other duties in respect of his office, as he ought; the county, as his superior, shall answer for him. 2 *Inst.* 175. County to answer for him.

3. And being chosen by the county, his office continues, notwithstanding the demise of the king. 4 *Inst.* 271. Office not void by the king's death.

4. After he is chosen, he shall be sworn, by the sheriff, for the due execution of his office. 2 *Hale's H.* 55. To be sworn.

5. But in the statute of 28 *Ed.* 3. which enacts that they shall be chosen by the county, there is a saving to the king and other lords, who ought to make coroners, their franchises. Others not chosen by the county.

6. The

Chief justice.

6. The lord chief justice of the king's bench, by virtue of his office, is the chief coroner of *England*. 2 *H. H.* 53.

III. His power and duty in taking an inquisition of death.

Notice.

1. When it happens that any person comes to an unnatural death, the township shall give notice thereof to the coroner. Otherwise, if the body be interred before he come, the township shall be amerced: *Hale's Pl.* 170.

Burying without notice.

2. And by *Holt Ch. J.* It is a matter indictable to bury a man that dies a violent death, before the coroner's inquest hath sat upon him. 2 *Haw. Not.* 8.

Lying unburied.

3. And if the township shall suffer the body to lie till putrefaction, without sending for him, they shall be amerced. *Hale's Pl.* 170. 2 *Haw.* 48.

Precept to summon a jury.

4. When notice is given to the coroner, he is to issue a precept to the constables of the four or six next townships, to return a competent number of good and lawful men of their townships, to appear before him in such a place, to make an inquisition touching that matter. 2 *H. H.* 59. Or he may send his precept to the constable of the hundred. *Wood* 848.

Jury.

5. These are to be at least 12; and it is said, that all persons of the neighbouring towns, above the age of 12 years, are bound to attend at the taking the inquisition, unless they have a reasonable excuse to the contrary. 2 *Inst.* 148. 2 *Haw.* 54.

Default in not appearing.

6. If the constables make not a return, or the jurors returned appear not, their defaults are to be returned to the coroner; and the constables or jurors in default shall be amerced before the judges of assize. 2 *H. H.* 59.

Swearing and charge.

7. The jury appearing is to be sworn and charged by the coroner to enquire, upon the view of the body, how the party came by his death. 2 *H. H.* 60.

View of the body.

8. For he can take indictments of death, only upon view of the body, and not otherwise; therefore if the body be interred before he come, he must dig it up. And this he may do lawfully, within any convenient time, as in 14 days. *Hale's Pl.* 170. 2 *Haw.* 48.

Where the body cannot be viewed.

9. If the body cannot be viewed, the coroner can do nothing; but the justices of the peace shall inquire thereof. *Hale's Pl.* 170. 2 *Haw.* 48.

Form of the charge, where a person is slain.

10. The jury being sworn, and the body upon view, he shall inquire upon the oaths of them, in this manner, by the statute of 4 *Ed. 1. c. 2.* called the statute *de officio coronatoris*; viz.

If they know where the person was slain; whether it were in any house, field, bed, tavern, or company:

Who were culpable, either of the act, or of the force; and who were present, either men or women, and of what age soever they be, if they can speak, or have any discretion:

And how many soever be found culpable, they shall be taken and delivered to the sheriff, and shall be committed to the gaol;

And

And such as be found, and be not culpable, shall be attached until the coming of the judges of assize.

11. And, by the same statute, if it fortune any such man be slain, which is found in the fields, or in the woods, first it is to be inquired, whether he was slain in the same place or not: Where a person slain is found in the fields or woods.

And if he were brought and laid there, they shall do so much as they can to follow their steps that brought the body thither, whether he were brought upon a horse, or in a cart:

It shall be also inquired, if the dead person were known, or else a stranger, and where he lay the night before.

12. Also, by the same statute, all wounds ought to be viewed, Wounds. the length, breadth, and deepness; and with what weapons; and in what part of the body the wound or hurt is; and how many be culpable; and how many wounds there be; and who gave the wound.

13. And they must hear evidence on all hands, if it be offered to them, and that upon oath, because it is not so much an accusation or an indictment, as an inquisition or inquest of office. Defendants evidence.

2 *H. H.* 157.

14. And by the aforesaid statute, if any be found culpable of the murder, the coroner shall immediately go to his house, and shall inquire what goods he hath, and what corn he hath in his graunge; and if he be a freeman, they shall inquire how much land he hath, and what it is worth yearly, and further, what corn he hath upon the ground: and likewise of his freehold, how much it is worth yearly, over and above the service due to the lord of the fee; and the land shall remain in the king's hands, until the lords of the fee have made fine for it: To inquire of the murderer's lands and goods.

And when they have thus enquired upon every thing, they shall cause all the land, corn, and goods to be valued, in like manner as if they should be sold immediately; and thereupon they shall be delivered to the whole township, which shall be answerable before the judges for all.

15. In like manner, by the said statute, it is to be inquired of them that be drowned, or suddenly dead, whether they were so drowned, or slain, or strangled by the sign of a cord tied streight about their necks, or about any of their members, or upon any other hurt found upon their bodies. And if they were not slain, then ought the coroner to attach the finders, and all other in the company. Persons drowned or suddenly dead.

16. He shall also inquire, whether the persons found guilty, fled; for which flight they forfeit goods and chattels. 2 *Harw.* Flight.

48, 53.

17. And if any person be slain or murdered in the day time, and the murderer escape untaken, the township shall be amerced. Township amerced for an escape.

3 *H. 7. c. 1.*

18. Concerning horses, boats, carts, and the like, whereby any are slain, which properly are called deodands, they also shall be valued, and delivered unto the towns as before. 4 *Ed. 1. ft. 2.* Deodands.

19. All which things must be inrolled in the rolls of the coroner. 4 *Ed. 1. ft. 2.* Coroner's rolls.

20. And

Sheriff's rolls.

20. And the sheriffs shall have counter rolls with the coroner, of things belonging to their office. 3 *Ed. 1. c. 10.*

Adjourning after view.

21. But it is not necessary that the inquisition be taken in the very same place where the body was viewed; but they may adjourn to a place more convenient. 2 *Haw. 48.*

Burial.

22. Immediately upon these things being inquired, the bodies of such persons being dead, or slain, shall be buried. 4 *Ed. 1. ft. 2.*

Certifying to the assizes.

23. By the 1 & 2 *P. & M. c. 13. s. 5.* Every coroner, upon any inquisition before him found, whereby any person shall be indicted for murder or manslaughter, or as accessory before the offence committed, shall put in writing the effect of the evidence given to the jury before him, being material; and shall bind over the witnesses to the next general gaol delivery to give evidence; and shall certify the evidence, the recognizance, and the inquisition or indictment before him taken and found, at or before the trial, on pain of being fined by the court.

By the express words of which statute, he may inquire of *accessaries before the fact*; but he cannot inquire of accessaries *after the fact*. 2 *Haw. 48.*

Person dying in gaol.

24. He ought also to inquire of the death of all persons who die in prison; that it may be known, whether they died by violence, or any unreasonable hardships: for if a prisoner, by the dures of the gaoler, comes to an untimely death, it is murder in the gaoler, and the law implies malice in respect of the cruelty. 3 *Inst. 52, 91.*

IV. His power and duty in other matters.

Treasure trove.

1. He ought to inquire of treasure that is found; who were the finders, and likewise who is suspected thereof; and that may well be perceived, where one liveth riotously, haunting taverns, and hath done so of long time: hereupon he may be attached for this suspicion, by four, or six, or more pledges, if he may be found. 4 *Ed. 1. ft. 2.*

Executing process.

2. Besides his judicial place, he hath also an authority ministerial as a sheriff; namely, when there is just exception taken to the sheriff, judicial process shall be awarded to the coroner, for the execution of the king's writs: and in some special cases, the king's original writ shall be immediately directed to him. 4 *Inst. 271.*

Outlawry.

3. He is bound to be present in the county court, to pronounce judgment of outlawry upon the exigent, after *quinto ex-actus*, at the fifth court, if the defendant doth not appear. *Wood 833.*

Appeals.

4. He had anciently also a power in certain appeals, as of rape, and maim; which are now out of use.

V. His fees.

Fee of 13 s. 4 d.

1. By the statute of 3 *H. 7. c. 1.* The coroner shall have for his fee, upon every inquisition taken upon the view of the body slain,

slain, 13 s. 4 d. of the goods and chattels of him that is the slayer and murderer, if he have any goods; and if not, he shall have for his said fee, of such amerciaments as shall fortune any township to be amerced for escape of such murderer.

2. Moreover, by the 25 G. 2. c. 29. For every inquisition (not taken upon view of a body dying in gaol) he shall have 20 s. and also 9 d. for every mile he shall be compelled to travel from his usual place of abode to take such inquisition; to be paid by order of the justices in sessions, out of the county rates; for which order no fee shall be paid. S. 1. Fee of 20 s. and 9 d. a mile.

And for every inquisition taken on view of a body dying in prison, he shall be paid so much, not exceeding 20 s. as the justices in sessions shall allow; to be paid in like manner. S. 2.

But no coroner of the king's household, and of the verge of the king's palaces; nor any coroner of the admiralty; or of the county palatine of *Durham*; nor of the city of *London* and borough of *Southwark*, nor any franchises belonging to the said city; nor of any city, town, or franchise, not contributing to the county rates, or within which such rates have not been usually assessed, shall be intitled to any benefit by this act; but they shall have such fees and salaries as they were allowed before this act, or as shall be allowed by the persons by whom they have been appointed. S. 5.

VI. His punishment for not doing his duty.

1. Coroners concealing felonies, or not doing their duty thro' favour to the misdoers, shall be imprisoned a year, and fined at the king's pleasure. 3 Ed. 1. c. 9. His punishment for neglect of duty.

2. And by the 3 H. 7. c. 1. If any coroner be remiss, and make not inquisitions upon the view of the body dead, and certify the same to the gaol delivery; he shall forfeit to the king an hundred shillings.

3. And by the 25 G. 2. c. 29. If any coroner, not appointed by an annual election or nomination, or whose office is annexed to any other office, shall be convicted of extortion for taking more than his lawful fees, or of wilful neglect of his duty, or misdemeanor in his office; the court may adjudge him to be removed from his office; and thereupon, if he shall have been elected by the freeholders, a writ shall issue for the removing him, and electing another in his stead; and if he hath been appointed by the lord of any liberty or franchise, or in any other manner than by the freeholders, the person intitled to nomination, shall on notice of such judgment of removal, nominate another person in his stead. S. 6.

4. And he ought to execute his office in person, and not by deputy; for he is a judicial officer. *Wood* 141. Otherwise it seemeth that he shall incur the aforesaid penalties, for remissness or neglect of duty.

The coroner's precept to summon a jury.

Westmorland. } To the high constable of——in the said county.

THESE are in the name of our sovereign lord the king, to require you, immediately upon sight hereof, to summon and warn 24 good and lawful men of the four next townships to—— in the said county, to be and appear before me A. C. gentleman, one of the coroners of the county aforesaid, at —— aforesaid in the said county, on the —— day of —— then and there to inquire of, do, and execute all such things as on his majesty's behalf shall be lawfully given them in charge. Whereof fail not, as you will answer the contrary at your peril. Given under my hand and seal, the —— day of ——.

The jurors oath on the coroner's inquest.

YOU shall diligently inquire, and true presentment make, on the behalf of our sovereign lord the king, how and in what manner A. D. (or, a person unknown, as the case is) here lying dead, came to his death; and of such other matters relating to the same as shall be lawfully required of you, according to your evidence: So help you God.

After the foreman is sworn, the rest may be sworn, three or four together, as follows;

Such oath as A. F. the foreman of this inquest hath for his part taken, you and every of you shall well and truly observe and keep on your parts respectively: So help you God.

Inquisition of murder.

Westmorland. **A**N inquisition indented, taken at —— in the county of —— aforesaid, the —— day of —— in the —— year of the reign of —— before me A. C. gentleman, one of the coroners of our lord the king, for the county aforesaid, upon the view of the body of A. D. then and there lying dead, upon the oaths of A. B. C. D. E. F. &c. good and lawful men of —— aforesaid, and of three other of the next towns, to wit, K. L. and M. in the said county, who being sworn and charged to inquire on the part of our said lord the king, when, where, how, and after what manner, the said A. D. came to his death, do say upon their oath, that one A. M. late of —— aforesaid, gentleman, not having God before his eyes, but being moved and seduced by the instigation of the devil, on the —— day of —— in the —— year of —— aforesaid, at the first hour in the night of the same day, with force and arms, at —— in the county aforesaid, in and upon the aforesaid A. D. then and there being in the peace of God and of the said lord the king, feloniously, voluntarily, and of his malice forethought, made an assault; and that the aforesaid

A. M. then and there with a certain sword made of iron and steel, of the value of 5s. which he the said A. M. then and there held in his right hand, the aforesaid A. D. in and upon the left part of the belly of the said A. D. a little above the navel of the said A. D. then and there violently, feloniously, voluntarily, and of his malice forethought, struck and pierced, and gave to the said A. D. then and there with the sword aforesaid, in and upon the aforesaid left part of the belly of the said A. D. a little above the navel of the said A. D. one mortal wound of the breadth of half an inch, and of the depth of three inches, of which said mortal wound the aforesaid A. D. then and there instantly died; and so the said A. M. then and there feloniously killed and murdered the said A. D. against the peace of our said lord the king, his crown and dignity.

And the said jurors further say, upon their oath aforesaid, that A. A. of ——— yeoman, and B. A. of ——— yeoman, were feloniously present with drawn swords, at the time of the felony and murder aforesaid in form aforesaid committed, that is to say, on the said ——— day of ——— in the ——— year aforesaid, at ——— aforesaid in the county aforesaid, at the first hour in the night of the said day, then and there comforting, abetting, and aiding the said A. M. to do and commit the felony and murder aforesaid in manner aforesaid, against the peace of our said sovereign lord the king, his crown and dignity.

And moreover, the jurors aforesaid, upon their oath aforesaid, do say, that the said A. M. A. A. and B. A. had not, nor any of them had, nor as yet have or hath any goods or chattels, lands or tenements, within the county aforesaid, or elsewhere, to the knowledge of the said jurors.

In witness whereof, as well the aforesaid coroner, as the jurors aforesaid, have to this inquisition put their seals, on the day and year aforesaid, and at the place aforesaid.

A. C. Coroner.

A. B.

C. D.

E. F. &c. jurors.

An inquisition where one hangs himself.

—— As above to —— not having God before his eyes, but being seduced and moved by the instigation of the devil, at —— aforesaid, in a certain Wood at —— aforesaid standing and being, the said A. D. being then and there alone, with a certain hempen cord of the value of 3d. which he then and there had and held in his hands, and one end thereof he then and there put about his neck, and the other end thereof he tied about a bough of a certain oak tree, and himself then and there, with the cord aforesaid, voluntarily and feloniously, and of his malice forethought, hanged and suffocated; and so the jurors aforesaid, upon their oath aforesaid say, that the said A. D. then and there in manner and form aforesaid, as a felon of himself, feloniously, voluntarily, and of his malice forethought, himself killed, strangled, and murdered, against the peace &c.

An inquisition where one drowns himself.

— at ——— aforesaid, in the county aforesaid, then and there being alone, in a common river there, called ——— himself voluntarily and feloniously drowned; And so the jurors aforesaid, upon their oath aforesaid say, that the aforesaid A. D. in manner and form aforesaid, then and there himself voluntarily and feloniously as a felon of himself killed and murdered; against the peace ———.

An inquisition upon one who dies in gaol.

— who say upon their oath, that the aforesaid A. D. on the day of the taking of this inquisition, being a prisoner in the gaol at ——— in the county aforesaid, then and there died of the visitation of God, and then and there in manner and form aforesaid came to his death, and not otherwise. In witness &c.

An inquisition on one non compos mentis.

— who say upon their oath, that the aforesaid A. D. on the day and year aforesaid, and at the time of his death, to wit, from the ——— day of ——— to the time of his death, and at the time of his death aforesaid, was a lunatick, and a person of insane mind; and that the said A. D. being a lunatick and a person of insane mind as aforesaid, did on the ——— day of ——— come alone to a certain river, called ——— in the said county, and did then and there cast himself into the said river, and drowned himself in the water of the said river. And so the jurors aforesaid, upon their oath aforesaid say, that the aforesaid A. D. from the cause aforesaid, in manner and form aforesaid, came to his death, and not otherwise. In witness &c.

An inquisition on one for cutting his throat.

— by the instigation of the devil, at ——— aforesaid in the county aforesaid, in and upon himself, then and there being in the peace of God and of the said lord the king, feloniously, voluntarily, and of his malice forethought, made an assault; and that the aforesaid A. D. then and there with a certain knife, of the value of one penny, which he the said A. D. then and there held in his right hand, himself upon his throat then and there feloniously, voluntarily, and of his malice forethought did strike, and gave to himself then and there with the knife aforesaid, upon his throat aforesaid, one mortal wound, of the breadth of four inches, and the depth of one inch, of which said mortal wound the said A. D. at ——— aforesaid in the county aforesaid languished, and languishing lived, from the said ——— day of ——— in the ——— year aforesaid, to the ——— day of ——— and that the said A. D. on the ——— day of ——— aforesaid, in the ——— year aforesaid, at ——— aforesaid, in
1 the

the county aforesaid, of that mortal wound died. And so the jurors aforesaid &c.

For killing another in his own defence.

— upon their oaths say, that A. K. late of — gentleman, at — aforesaid in the said county, on the — day of — in the — year of — in the peace of God and of our said lord the king then being, A. M. late of — in the county of — at the hour of — in the afternoon of the same day, did come, and upon him the said A. K. then and there of his malice forethought did make an assault, and him the said A. K. did then and there endeavour to beat and kill, by continuing the assault aforesaid, from the house of one W. H. in — aforesaid to a certain place called — in the county aforesaid, and the said A. K. seeing that the said A. M. was so maliciously disposed, to a certain wall in the said place, called — did flee, and from thence for fear of death could not escape, and so the said A. K. himself, in preservation of his life, against the said A. M. continued to defend, and in his own defence him the said A. M. upon the right part of the breast of him the said A. M. with a certain sword of the price of one shilling, which the said A. K. then and there held in his right hand, did strike, then and there giving to the said A. M. one mortal wound, of the breadth of one inch and of the depth of three inches, of which said mortal wound the said A. M. at — aforesaid in the county aforesaid languished, and languishing lived from the said — day of — to the — day of — from thence next ensuing, and that the said A. M. on the said — day of — in the — year aforesaid, at — aforesaid in the said county, of that mortal wound died; And so the said A. K. did then and there kill him the said A. M. in his own defence.

An inquisition where the murderer is unknown.

— The same as before, only say — that a certain person unknown &c. and add — And the said jurors upon their oath aforesaid further say, that the said person unknown, after he had committed the said felony and murder in manner aforesaid, did fly away: Against the peace &c.

Cottage.

A Cottage (Sax. Cote) is a little house for habitation, without any land belonging to it. Wood 763.

By the 31 El. c. 7. No person shall build any cottage for habitation, nor convert any building to be used as a cottage for habitation, unless he lay to the same four acres of ground at the least, according to the statute or ordinance de terris mensurandis, being his own free-

hold or inheritance lying near to the said cottage, to be continually occupied and manured therewith, so long as the same cottage shall be inhabited; on pain of 10l. to the king. S. 1.

And every person who shall uphold and continue any such cottage, to be erected or converted for habitation, whereunto four acres shall not be laid to be occupied therewith, shall forfeit to the king 40s. for every month. S. 2.

And there shall not be any inmate, or more families than one, dwelling in any one cottage; on pain that the owner or occupier shall forfeit to the lord of the leet 10s. a month, who on presentment may levy the same by distress, or sue for it in any court of record. S. 3.

And the justices of assize, justices of the peace in sessions, and every lord within his leet, and no others, may hear and determine all offences against this act, by indictment, or by presentment, or information, and award execution by fieri facias, elegit, capias, or otherwise. S. 4.

But this act shall not extend to any cottage in any city, town corporate, or ancient borough, or market town; nor to any cottages for workmen only, in any mineral works, coal mines, quarries, or delfs of stone or slate, or in making brick, tile, lime, or coals, so as they be not above one mile distant from the place of working. S. 5.

Also this shall not extend to any cottage within a mile of the sea, or on the side of a navigable river where the admiral ought to have jurisdiction, so long as no person shall inhabit therein, but a sailor, or man of manual occupation for furnishing any ship or vessel; nor to any cottage to be made in any forest, chase, warren, or park, so long as no other person shall therein inhabit, but an under keeper or warrener; nor to any cottage heretofore made, so long as no other person shall therein inhabit, but a common herdsman or shepherd, for keeping the cattle or sheep of the town, or a poor, lame, sick, aged, or impotent person; nor to any cottage to be made, which for any just respect, on complaint to the assizes or sessions, shall by their order be decreed to continue for habitation, so long only as by such decree shall be limited. S. 6.

And by the 43 El. c. 2. The churchwardens and overseers, by consent of the lord of the manor, may erect cottages on the wastes and commons, for the habitation of the poor, but for no other purpose. S. 5.

No person shall build any cottage for habitation] An indictment for erecting a cottage contrary to the statute, was quashed; because it was not said that any inhabited it: for if it was not inhabited, it was no offence. 1 Ventr. 107.

According to the statute or ordinance de terris mensurandis] That is, after 16 $\frac{1}{2}$ foot to the pole. 2 Inst. 737.

Being his own freehold or inheritance] Therefore neither grounds holden by copy, or for life or lives, or for any number of years will serve: and it must be freehold, either in fee simple, or fee tail. 2 Inst. 737.

Justices of assize, justices of the peace in sessions, and every lord within his leet] So that there is a concurrent power in every of these three; and the judgment of such one of them as doth first enquire of, hear, and determine the same, shall stand. 2 *Inst.* 739.

Nor to any cottage heretofore made] That is, erected before the making of this act.

Finally, Lord Coke observing upon this act of the 31 *El.* says, The inconveniences that grow by unlawful cottages against this statute are great; being nests to hatch idleness, the mother of pickings, thieveries, stealing of wood, and the like; tending also to the prejudice of lawful commoners, for that new erected cottages within the memory of man, tho' they have four acres of ground, or more, laid to them, according to this act, ought not to common in the wastes of the lord; but the greatest inconvenience of all is, the ill breeding and educating of youth; which inconveniences may be easily helped and remedied, by the provisions of this excellent law, if lords of leets and their stewards would look to the execution of this act, which (he says) he holds to be the readiest means; for albeit the cottage erected, or converted, cannot by any provision in this statute be demolished, or pulled down, yet the execution of the penalty of this act will make it uninhabitable, and work the desired effect. And they may also be amerced, for wrongful commoning, in the court baron. 2 *Inst.* 740.

Counterfeit. See Coin, Cheat, Forgery.

County court.

1. **T**HE word *county* is fetched from the *French*, and *shire* County. from the *Saxon*; for *scyran*, in the *Saxon* tongue, signifieth to *share* or divide, and every county or shire is divided and parted by certain metes and bounds from another. It is called in *Latin* *comitatus*, a *comitando*, from accompanying together, as at the county court, tourn, and other courts. 1 *Inst.* 50.

2. This court is no court of record, but only a court baron. County court. 4 *Inst.* 266.

3. No county court shall be longer deferred than one month When to be from court to court, so that the county court shall be kept every holden. month, and not otherwise. 2 & 3 *Ed.* 6. c. 25.

And this is to be accounted 28 days to the month, and not according to the month of the kalendar. 2 *Inst.* 71.

4. It may be kept at any place within the county, unless restrained by statute. *Wood* 832. Where to be kept.

5. The suitors, that is, the freeholders, are the judges in this court; except that in re-disseisin, by the statute of *Merton*, the sheriff is judge. And by the statutes concerning parliamentary How far the sheriff is judge. elections,

elections, he is judge at the election of knights; for he must make a true return at his peril. *Barl. County Court.*

Of what sum
this court hath
cognizance.

6. This court shall hold pleas betwixt party and party, where the debt or damage is under 40*s.* 4 *Inst.* 266.

But in a *replevin*, the sum may be above 40*s.* 4 *Inst.* 266.

Of what offences
this court hath
cognizance.

7. Also it hath not cognizance of trespass *vi & armis*, because a fine is thereby due to the king, which it cannot impose. 4 *Inst.* 266.

One plaint for
one trespass or
contract.

8. And by the 11 *H. 7. c. 15.* No plaint shall be entred in the county court, but where the plaintiff or his attorney is present; and the plaintiff shall find pledges to pursue his plaint; and he shall have but one plaint for one trespass or contract; on pain of 40*s.* half to the king, and half to the prosecutor. And one justice may examine the sheriff or other officer, making default; and shall, within a quarter of a year, certify the examination into the exchequer.

But as to the pledges abovementioned, they are now disused in this court; and were formerly used only in cases where the plaintiff lived out of the county. *Greenw. 11. Read. County C.*

Writ of justicies.

9. But by virtue of a writ of *justicies*, the court may hold plea of trespass *vi & armis*, and of any sum, or of all actions personal above 40*s.* For this writ is in the nature of a commission to the sheriff, and is *vicontiel*, that is, belongs to the sheriff, and is triable in the county court, and is not returnable. 4 *Inst.* 266.

Who shall act as
attorney in this
court.

10. By the 12 *G. 2. c. 13. s. 7.* If any person shall commence or defend any action, or sue out any writ, process, or summons, or carry on any proceedings in the county court, who shall not be admitted attorney or solicitor according to the act of 2 *G. 2. c. 23.* he shall forfeit 20*l.* with costs, to him who shall sue in any court of record.

Which said act of 2 *G. 2.* hath continuance by the 22 *G. 2. c. 46.* to *Jun. 24. 1757, &c.*

Summons.

11. The plaintiff in this court first takes out a summons, returnable at the next county court; and if the defendant do not appear, an attachment or *disfringas* is to be made out: but if the defendant appears, the plaintiff is to file his declaration, shewing his cause of action, or matter of complaint, in what manner the action accrued, at what time and place the wrong was done, and the damage he hath sustained. *Greenw. 11. Read. County C.*

Declaration.

12. If the defendant doth appear, and the next court after gives a rule to declare, and the plaintiff doth not file his declaration within the time, he may be nonsuited. *Id.*

Continuance.

13. When the plaintiff hath declared, he must continue his suit from court day to court day, otherwise the defendant may take advantage of it; and this is called a continuance, being an adjourning of the suit from time to time, to keep it on foot. *Id.*

Dies datus.

14. The rule, or *dies datus*, is when farther day is given to the plaintiff to declare, or to the defendant to plead; and the time given is usually to the next court day, but upon occasion may be enlarged. *Id.*

15. The

15. The next court after filing the declaration, and imparlance Answer. given, the defendant is to put in his answer or plea, and if the plaintiff join issue, they may proceed to trial the next court day, if they proceed not farther by replication, rejoinder, surrejoinder, and the like. *Id.*

16. But if freehold is pleaded by the defendant, this court can Plea of freehold. proceed no further, for freehold shall never be tried without writ; therefore the cause must be removed: as when a defendant avoweth for damage feasant, and the plaintiff justifieth by reason of common of pasture. *Wood 833.*

17. Where a verdict is given for the plaintiff, and judgment Judgment and distrefs. entred thereupon, a *feri facias* may be awarded against the defendant's goods, which may be taken by virtue thereof, and appraised and sold, to satisfy the plaintiff; but if the defendant hath no goods whereupon to levy, the plaintiff remains without remedy in this court, for it being no court of record, no *capias* lies there; but an action may be brought at common law upon the judgment entred. *Greenw. 22. Read. County C.*

18. Causes are removed out of this court, by a writ of *re-* Removal by recordare, which issues out of the chancery, directed to the sheriff, cordare. commanding him to send the plaint that is before him in his county court (without writ of *justicies*) into the court of king's bench, or common pleas, to the end the cause may be there determined. And the sheriff is hereupon to summon the other party to be in that court (into which the plaint is to be sent) at a day certain. And of all this he is to make a certificate under his own seal, and the seals of four suitors of the same court. *Read. County C.*

19. Causes are also removed by *pone*, which differs in nothing Removal by pone. from a *recordare*, but that it removes such suits as are before the sheriff by writ of *justicies*, and a *recordare* is to remove the suit that is by plaint only, without writ. *Id.*

20. And altho' the plea be discontinued in the county, yet the Removal after plaintiff or defendant may remove the plaint into the common discontinuance. pleas or king's bench, and it shall be good, and he shall declare upon the same. *Id.*

21. In this court, after the *quinto exactus*, the coroner gives Outlawry pronounced. judgment of outlawry. 4 *Inst.* 266.

22. Out of the county court is derived the hundred court, for Hundred court. the ease of the subject; and it hath like jurisdiction as the county court, and may be held every three weeks. 2 *Inst.* 71.

County rate.

1. **T**HE several rates hereafter following, in order to avoid All the rates following to be thrown into one general county rate; viz. for the inconveniences of separate collections, shall for the future be levied and raised by one general county rate;

That is to say,

(1) For repairing county bridges, and highways thereto adjoining, and salaries for the surveyors of bridges; as directed by the 22 H. 8. c. 5. and 1 An. st. 1. c. 18. (Bridges)

- (Gaols) (2) For building and repairing county gaols; by 11 & 12 W. c. 19.
- (Salary for the master of the house of correction) (3) For the master of the house of correction his salary, and relieving the weak and sick in his custody; by the 7 Y. c. 4.
- (Marshallsea) (4) For relief of the prisoners in the king's bench and marshallsea prisons, and of poor hospitals in the county, and of those that shall sustain losses by fire, water, the sea, or other casualties, and other charitable purposes for relief of the poor; by the 43 El. c. 2.
- (Relief of prisoners) (5) For relief of prisoners in the county gaol; by 14 El. c. 5.
- (Setting prisoners on work) (6) For setting prisoners on work; by the 19 C. 2. c. 4.
- (Treasurer's salary) All which said six distinct rates (and that for vagrants by the 12 An. now repealed) are incorporated into one general county rate, by the 12 G. 2. c. 29. And by the said statute, and other subsequent statutes, these other following charges are likewise directed to be paid out of the said general county rate; to wit,
- (Certiorari charges) (7) The treasurer's salary; by the 12 G. 2. c. 29.
- (Lands at the ends of bridges) (8) Charges attending the removal of any the said general county rates by *certiorari*; by the 12 G. 2. c. 29.
- (Building and furnishing houses of correction) (9) Money for purchasing lands at the ends of county bridges; by the 14 G. 2. c. 33.
- (Vagrants) (10) Charges of building or repairing houses of correction, and for fitting up and furnishing the same, and employing the persons sent thither; by the 17 G. 2. c. 5. f. 33.
- (Soldiers carriages) (11) Charges of apprehending, conveying and maintaining rogues and vagabonds; by the 17 G. 2. c. 5.
- (Coroner's fees) (12) Charges of the soldiers carriages, over and above the officers pay for the same, by the several yearly acts against mutiny and desertion.
- (Commitment) (13) The coroner's fee of 9d. a mile for travelling to take an inquisition, and 20s. for taking it; by the 25 G. 2. c. 29.
- (Convicting felons) (14) Charges of carrying persons to the gaol, or house of correction; by the act of 27 G. 2.
- (Convicting stealers of shipwrecked goods) (15) Charges of prosecuting and convicting felons; by the 25 & 27 G. 2.
- (Transporting felons) (16) Charges of prosecuting and convicting persons plundering shipwrecked goods; by the 26 G. 2. c. 19.
- (Insolvent debtors) To which may be added these following, by former statutes; viz.
- (Sea apprentices) (17) By the 6 G. c. 23. The charges of transporting felons are directed to be paid by the treasurer out of the county stock; which is now the same in effect, as to charge it upon the general county rate; since there can be no county stock in the treasurer's hands but that.
- (18) Charges of bringing insolvent debtors to the assizes, in order to their discharge, if themselves are not able to pay; by the 3 G. 2. c. 27.
- (19) Charges of carrying parish apprentices, bound to the sea service, to the port to which the master belongeth; by the 2 & 3 An. c. 6.

2. And that the same may be collected with as much ease, and as little expence as possible, the justices at their general or quarter sessions, or the greater part of them, shall have power to make one general rate to answer all the purposes aforesaid. 12 G. 2. c. 29. *f. 1.* Sessions to lay the rate.

Which rate shall be assessed in such proportions, in every parish or place, as any of the rates by the said several former acts have been usually assessed. Id.

By which last words reference being made to the former acts, as to the manner of proportioning the rate, it is proper to insert here, how the case stands upon the said former acts, as to such laying of the assessment; and it is thus:

(1) By the abovementioned act of the 22 H. 8. (in regard to bridges) the justices were to rate every inhabitant within their jurisdiction, in such reasonable sum, as they should think convenient. And by the 1 An. st. 1. c. 18. Every town, parish, or place was to be assessed, as they usually had been assessed towards the repair of bridges.

(2) By the 14 El. c. 5. (for relief of prisoners) the justices were to rate every parish at such reasonable sums as they should think convenient.

(3) By the 43 El. c. 2. (for hospitals and the marshalsea) the same was to be rateably assessed upon every parish.

(4) By the 7 J. c. 4. (for the master of the house of correction his salary) the same was to be rated, as for hospitals and the marshalsea, by the 43 El. c. 2.

(5) By the 19 C. 2. c. 4. (for setting prisoners on work) to be raised as other county charges.

(6) By the 11 & 12 W. c. 19. (for repairing gaols) to be assessed by the justices in equal proportions, on every hundred, ward, or other division.

(7) And for vagrants (by the 12 An. now repealed) the money was to be raised as for bridges and gaols.

So that upon the whole, here seems to be intended an equal, proportionable rate, upon every division.

3. And where any person, liberty, division, or place hath usually contributed, or is liable to pay, only to one or more of, and not to all the rates hereby intended to be raised, and thrown into one general rate; the justices at their general or quarter sessions may order and ascertain, what proportion thereof shall be assessed on, and paid by such person, liberty, division, or place. 12 G. 2. c. 29. *f. 5.* Places exempted from part of the rate.

As for instance, where by the statute of 22 H. 8. c. 5. towns corporate are charged for the repairing of bridges within their respective liberties; and the counties, for the bridges out of such liberties; in such case, a town corporate ought not to be charged towards the bridges in the county at large; and consequently ought to have an abatement in the rate charged upon them, in such proportion as the expence of bridges is to the whole expence of the several articles charged upon the said general county rate; as if the expence of bridges be a tenth part of the whole expence chargeable upon the county rate, then such town corporate shall have

County rate.

have an abatement of one shilling for every ten, which it would otherwise be charged with in such rate.

Places exempted
from the whole
rate.

4. And by the 13 G. 2. c. 18. f. 7. Where any liberties or franchises have commissions within themselves, and are not subject to the county justices, and do not, nor did before the 12 G. 2. contribute to the county rates; the justices within such liberties may exercise the same powers within their liberties, as justices in their counties.

High constable
to make demand.

5. Which said rates the high constables shall, at such times as the said justices by their order in sessions shall direct, demand of the churchwardens and overseers; which demand shall be made in writing (A) and given to them, or any of them, or left at their dwelling houses, or affixed on the church doors, by the said high constables. 12 G. 2. c. 29. f. 2.

Overseers to pay.

6. Whereupon the said churchwardens and overseers shall, in 30 days after such demand made, out of the money collected for relief of the poor, pay the sums so assessed on each parish or place. 12 G. 2. c. 29. f. 2.

To be levied by
distress.

7. And if the churchwardens or overseers, or any of them, shall neglect or refuse so to pay, the high constable shall levy the same by distress and sale of the goods of such churchwardens or overseers so refusing or neglecting, by warrant of two or more justices residing in or near such parish or place. 12 G. 2. c. 29. f. 2.

High constable's
receipt.

8. And the receipt of such high constable shall be a full discharge to the churchwardens and overseers, or other person paying the same. 12 G. 2. c. 29. f. 2.

Case where there
is no poor rate.

9. Where there is no poor rate, the justices, in their general or quarter sessions, shall by their order direct the sum assessed on such parish, township, or place, to be rated and levied by the petty constable, or other peace officer, *as money for relief of the poor is by law to be rated or levied*: Which sum so rated and levied shall be paid by him to the high constable, and shall be demanded of, paid by, or levied on such petty constable, in the same manner as before of the churchwardens and overseers. And if any petty constable shall pay such sum before he hath collected it, he may afterwards rate and levy the same, or may be allowed and reimbursed the same, out of any constable's or other rate, which the justices in their sessions shall order and direct. 12 G. 2. c. 29. f. 3.

As money for relief of the poor is to be rated or levied] That is to say, by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes, coal mines, or saleable underwoods. 43 El. c. 2. f. 1.

Northern
counties.

10. And whereas it will be inconvenient to many towns, parishes, and places, in the counties of York, Derby, Durham, Lancaster, Chester, Westmorland, Cumberland, and Northumberland, that the said rates should be paid out of the poor rate, the justices at their general or quarter sessions, *if they shall think convenient*, may order the sum assessed on any such town, parish, or place, to be paid by and levied on the petty constable (B), in such manner

manner as is above directed, in cases where no rate is made for the poor. 12 G. 2. c. 29. f. 4.

If they shall think convenient] By which words, the justices in those counties may order the rate to be paid by either of the two methods before mentioned, according to their discretions; that is to say, either by the churchwardens and overseers out of the poor rate; or by the petty constables by an assessment after the manner of the poor rate. And the reason of this clause seems to be, because some parishes in the northern counties being very large, and for that reason subdivided into several townships with regard to the poor, it may happen that some townships in the same parish may be high rated, and others low rated, towards the relief of their poor; therefore if a general sum for the county rate upon the whole parish, were to be charged upon all the inhabitants, in proportion to their poor rate, it would lay the burden very unequally. To remedy which, the justices by this clause may charge separately such sum as they shall think reasonable, upon each subdivision or constablewick, in order to lay the same equally throughout the parish: and if any township shall be aggrieved thereby, they may appeal as hereafter is directed, or remove it by *certiorari*.

11. The said high constables, at or before the next sessions respectively after they have received the money, shall pay the same to the treasurer; and the money so paid, shall be deemed the publick stock. 12 G. 2. c. 29. f. 6. High constable to pay to the treasurer.

12. And the treasurer's receipt shall be a sufficient discharge to the high constable. 12 G. 2. c. 29. f. 9. Treasurer's receipt.

13. And the said high constables shall deliver in a true account on oath (if required) of the money by them received, before the said justices at their general or quarter sessions: And if any such high constable shall neglect or refuse to demand or levy as aforesaid, or to account, the said justices at their general or quarter sessions may commit him to the common gaol, until he shall have caused such rates to be demanded and levied, and shall have rendered a true account. And if it shall appear by such account, that any sum is remaining in his hands, and he shall not pay over the same to the treasurer, they may commit him till he pay the same. 12 G. 2. c. 29. f. 8. High constable to account.

14. And the justices, at their general or quarter sessions, may oblige by their order, the petty constables or any other person empowered to levy, collect, or receive any sum for the purposes aforesaid, and who have any sum in their hands, to account and pay over the same, in like manner as the high constables. 12 G. 2. c. 29. f. 17. Petty constables and others to account.

15. And the treasurer shall pay so much of the money in his hands, to such persons, as the justices in sessions shall by their order from time to time appoint, for the uses and purposes of the said abovementioned acts, and for any other uses and purposes to which the publick stock of any county, city, division, or liberty, is or shall be applicable. 12 G. 2. c. 29. f. 6. Treasurer's disbursements.

16. And

Treasurer's
account.

16. And the treasurer shall keep a book of entries, of the sums by him received and paid; and shall deliver in a true account on oath if required, of his receipts and disbursements, to the justices at every general or quarter sessions, and also the proper vouchers for the same, to be kept amongst the records of the sessions. 12 G. 2. c. 29. s. 7, 8.

Sessions order a
discharge to the
treasurer.

17. And the discharge of the said justices, by their order at their general or quarter sessions, shall be a sufficient discharge to the treasurer. 12 G. 2. c. 29. s. 9.

New rate when
to be made.

18. And no new rate shall be made, until it appear, by the treasurer's accounts, or otherwise, that three fourths of the money collected have been expended for the purposes aforesaid. 12 G. 2. c. 29. s. 10.

Appeal.

19. If the churchwardens and overseers of any parish or place, shall think such parish or place is over-rated, they may appeal to the next general or quarter sessions, against such part of the rate only as may affect such parishes or places; but such rate, upon the appeal, shall not be quashed in regard to any other parishes or places. 12 G. 2. c. 29. s. 12.

Certiorari.

20. No *certiorari* to remove any rates, or any orders or other proceedings of the sessions touching such rates, shall be granted but upon motion the first week of the next term after the time for appealing from such rates or orders is expired; and on making it appear to the court by affidavit or otherwise, that the merits of the question on such appeal or orders, will by such removal come properly in judgment. And no such *certiorari* shall be allowed, until sufficient security be given to the treasurer, in the sum of 100 l. to prosecute the *certiorari* with effect, and to pay the costs if the rates or orders shall be confirmed. Nor shall any such rates, orders, or proceedings be quashed for want of form only. 12 G. 2. c. 29. s. 21.

And no action shall be commenced against any person who shall have collected or received any money, or any rate which shall be quashed on a *certiorari*, or otherwise, for any money collected or received on such rate before the *certiorari* was brought; but the persons who have paid on such rate more than they ought to have paid, shall be repaid, or have the same allowed in the next rate. 12 G. 2. c. 29. s. 18.

A. High constable's warrant to levy the rate.

Westmorland, } To the churchwardens and overseers of the
Kendal ward. } poor of the township [or parish] of——
in the said county.

BY virtue of an order of his majesty's justices of the peace in and for the said county, in their general quarter sessions assembled, you are hereby required in thirty days time from your receipt of this precept, or otherwise having had due notice thereof, to pay to me, out of the money by you collected or to be collected for the relief of the poor, the sum of——being the proportion of your said township [or parish] for and towards the general county rate,
for

for the repairing of bridges; repairing of the gaol, and for the relief of prisoners therein; and for the relief of the prisoners in the king's bench and marshalsea prisons; repairing and furnishing the house of correction, with the salary of the keeper thereof; the treasurer's salary; the coroner's fees; the charges concerning vagrants, soldier carriages, convicting and transporting felons, and other county charges. And herein you are not to fail, on the peril that shall ensue thereof. Given under my hand at Lathehead in the said county, the _____ day of _____

Tho. Dennison, High constable.

Or, in the northern counties abovementioned, the justices, if they think proper, instead of ordering the money to be paid by the churchwardens and overseers, may order it to be paid by the petty constables: and then the high constable's precept to the petty constables may be thus:

Westmorland, } To the constables of _____ in the said
Kendal ward. } county.

B*Y virtue of an order from his majesty's justices of the peace in and for the said county, in their general quarter sessions assembled, you are hereby required to raise the sum of _____ within your constablewick, for which you are to make an equal rate within your said constablewick, and to levy the same, in such manner as money for the relief of the poor is by law to be rated or levied: which said sum you are to pay unto me, in thirty days time from your receipt of this precept, or otherwise having had due notice thereof; the same being the proportion of your said constablewick, for and towards the general county rate, for the repairing of bridges.*

And so repeat the several particulars as in the last precedent; and that, for this reason, that the people may know what it is they pay their money for.

Court leet. See Leet.

Court of sessions. See Sessions.

Curriers. See Leather.

Customs.

THE laws relating to the customs, so far as justices of the peace, constables, and other such officers, are concerned therein, being considerably connected with the laws of excise, it is thought proper to refer this subject to the title *Excise*, where the whole will be more clearly comprehended under one view.

Custos rotulorum.

BY the 37 H. 8. c. 1. (which was altered by the 3 & 4 Ed. 6. c. 1. but restored by 1 W. c. 21.) No person shall be appointed to the office of *custos rotulorum*, but such as shall have a bill signed with the king's hand for the same; which bill signed shall be a sufficient warrant to the lord chancellor, to make a commission, assigning and authorizing thereby the same person to be *custos rotulorum*, until the king hath by another bill with his own hand appointed one other person to have the same office, by himself, or his sufficient deputy, learned in the laws, and meet and able to supply the said office.

In pursuance whereof, the last clause in the commission of the peace is generally to this effect: "Lastly, we have assigned you the aforesaid ——— keeper of the rolls of our peace in our said county, and therefore you shall cause to be brought before you and your said fellows, at the days and places aforesaid, the writs, precepts, processses, and indictments aforesaid, that they may be inspected, and by a due course determined, as is aforesaid."

Cutting out tongues. See Baim.

Cyder. See Excise.

Damage feasant. See Distress.

Debtors.

HOW prisoners for debt shall be demeaned. See title Gaol.

Insolvent debtors brought to the assizes, in order to be discharged, shall pay for their bringing thither, not exceeding 12 *d.* a mile; and if they are not able to pay, then the same shall be paid by the treasurer, out of the county stock. 3 G. 2. c. 27. s. 2.

The last insolvent act was the 21 G. 2. c. 31. for relief of persons imprisoned for debt, before Jan. 1. 1747. On which act no discharges were to be obtained after Dec. 25. 1750.

Deer. See Game.

Defamation. See Slander.

Demurrer,

Demurrer.

A *Demurrer* (from *demorari*) signifies an *abiding* in point of law, upon which the defendant joins issue, allowing the fact to be true as laid in the indictment. *Wood* 1082.

In criminal cases not capital, if the defendant demur to an indictment, the court will not give judgment against him to answer over, but final judgment. *2 Harw.* 334.

But regularly in all cases of felony, where a man pleads a special matter, tho' he conclude his plea with Not guilty to the felony, or do not conclude it so, yet if his plea be tried, or found, or ruled against him, he shall be put to his plea of Not guilty, and be tried for the felony; for tho' a man shall lose his land in some cases for mispleading, yet he shall not lose his life for mispleading. *2 H. H.* 257.

Deodand.

1. **D**EODAND is, when any moveable thing inanimate, or beast animate, doth move to or cause the untimely death of any reasonable creature, by mischance, without the will or fault of himself, or of any person. *3 Inst.* 57.

2. This, altho' it be not properly homicide, nor punishable as a crime, yet is taken notice of by the law, as far as the nature of the thing will bear, in order to raise the greater abhorrence of murder: And the unhappy instrument or occasion of such death, is called a *deodand* (*deo dandum*), and forfeited to the king, to be disposed of to pious uses by the king's almoner; as also are all such weapons whereby one man kills another. *3 Inst.* 57. *1 Harw.* 66.

3. It seems clearly settled, contrary to the former opinions, that a horse, or the like, killing an *infant* within the age of discretion, is as much forfeited as if he were of age. *1 Harw.* 66.

4. Also, it was anciently holden, that things *fixed to a freehold*, as the wheel of a mill, or a bell hanging in the steeple, may be deodands; but by the latter resolutions they cannot, unless they were severed before the accident happened. *1 Harw.* 66.

5. It is agreed by all, that a *ship* in salt water, from which a man falls and is drowned, is not forfeited, because persons at sea are continually exposed to so many perils, that the law imputes not such misfortunes to the ship. Also it seems clear, that when a man riding on a horse over a river, is drowned thro' the violence of the stream, the horse is not forfeited, because not that, but the water caused his death. But it is said, that a ship, by a fall from which a man is drowned, in the fresh water, shall be forfeited, but not the merchandize therein; because they no way contribute to his death. And by the same reason it seems, that if a man riding on the shafts of a waggon, fall to the ground and break his neck,

neck, the horses and waggon only are forfeited, and not the loading, because it no way contributed to his death; for which cause, where a thing not in motion causes a man's death, that part thereof only, which is the immediate cause, is forfeited. As where one climbing upon the wheel of a cart, while it stands still, falls from it, and dies of the fall, the wheel only is forfeited: But if he had been killed by a bruise from one of the wheels being in motion, the loading also would have been forfeited, because the weight thereof made the hurt the greater; and it is a general rule, that wherever the thing which is the occasion of a man's death is in motion at the time, not only that part thereof which immediately wounds him, but all things which move together with it, and help to make the wound more dangerous, are forfeited also.

1 *Haw.* 66.

6. Thus a cart met a waggon loaded upon the road, and the cart endeavouring to pass by the waggon, was driven upon an high bank and overturned, and threw a person that was in the cart, just before the wheels of the waggon, and the waggon ran over him and killed him; it was resolved in this case, that the cart, waggon, loading, and all the horses were deodands, because they all moved to the death. 1 *Salk.* 220.

7. If a weight of earth fall upon a worker in a mine, and kill him; the weight of earth is forfeit, and not the whole mine.

1 *H. H.* 420.

8. In all these cases, if the party wounded die not of his wound, within a year and a day after he received it, there shall be nothing forfeited; for the law doth not look on such a wound as the cause of a man's death, after which he lives so long: But if the party die within that time, the forfeiture shall have relation to the wound given, and cannot be saved by any alienation or other act whatsoever in the mean time. 1 *Haw.* 67.

9. However nothing can be forfeited as a deodand, nor seized as such, till it be found by the coroner's inquest to have caused a man's death; but after such inquisition, the sheriff is answerable for the value of it, and may levy the same on the town where it fell, and therefore the inquest ought to find the value of it.

1 *Haw.* 67.

10. And if the coroner omits his duty in this case, the inquisition may be made by the commissioners of gaol delivery, oyer, and terminer, or of the peace. 1 *H. H.* 419.

Dice. See Stamps.

Dissenters.

Dissenters.

I. Protestant dissenters exempted from certain penalties by the act of toleration.

II. Protestant dissenters intitled to certain privileges by the act of toleration.

III. Laws against dissenters not altered by the act of toleration.

IV. Laws relating to protestant dissenters made since the act of toleration.

I. Protestant dissenters exempted from certain penalties by the act of toleration.

1. **A**S to all protestant dissenters in general. Against whom the seven following statutes have been enacted:

(1) By the 1 *El. c. 2. §. 14.* Every person not having reasonable excuse, shall resort to their parish church or chapel, or upon reasonable let thereof, to some usual place where common prayer shall be used, on every *Sunday* and holiday; on pain of punishment by the censures of the church, or of forfeiting for every offence 12*d.*

(2) By the 23 *El. c. 1.* Every person above the age of 16, who shall not repair to some church, or chapel, or usual place of common prayer, shall forfeit for every month 20*l.* And if he shall forbear for 12 months he shall be bound to the good behaviour till he conform.

And if any person shall keep a schoolmaster, who shall not repair to church, or be allowed by the bishop, he shall forfeit 10*l.* a month, and the schoolmaster shall be imprisoned for a year.

(3) By the 29 *El. c. 6.* Every offender in not repairing to church, having been once convicted, shall without any other indictment or conviction, pay half yearly into the exchequer 20*l.* for every month afterwards, until he conform; which if he shall omit to do, the king may seize all his goods, and two parts of his lands.

(4) And by 1 *J. c. 4.* The king may refuse the 20*l.* a month, and take two parts of the land, at his option.

And any person retaining or keeping in his house any servant, or other, who shall not repair to church, shall forfeit 10*l.* a month.

(5) And by the 1 *J. c. 5.* No recusant in not repairing to church, being convicted thereof, shall enjoy any publick office, or shall practise law or physick, or be executor, administrator, or guardian.

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And if any persons shall send their children over seas for education, they shall forfeit 100*l.* and such child be disabled to inherit, or take any benefit by gift, conveyance, or devise.

(6) And by the 35 *El. c. 1.* If any person refusing to repair to church, shall be present at any assembly, meeting, or conventicle, under pretence of any exercise of religion, he shall be imprisoned till he conform; and if he shall not conform in three months, he shall abjure the realm; which if he shall refuse to do, or after abjuration shall not go, or shall return without licence, he shall be guilty of felony without benefit of clergy. And whether he shall abjure or not, he shall forfeit his goods, and shall forfeit his lands during life.

(7) And by the 22 *C. 2. c. 1.* If any person, being 16 years of age, shall be present at any conventicle or meeting, under pretence of any exercise of religion, in other manner than according to the liturgy and practice of the church of *England*, at which there shall be five persons or more assembled, besides those of the household, if it be in an house where there is a family; or if it be in a house, field, or place, where there is no family, then where any five persons or more are so assembled, — every justice of the peace before whom information shall be made, shall (on pain of 100*l.* half to the informer) on proof by confession, or oath of two witnesses, or the notorious evidence of the fact, make a record thereof (which shall be afterwards certified to the sessions), which record shall be a full conviction: Whereupon he shall impose upon every offender a fine of 5*s.* for the first offence, and for every other offence 10*s.* to be levied by distress and sale of the goods of the offender, or in case of the poverty of such offender, upon the goods of any other person then convicted of the like offence, so as the sum to be levied on any one person in case of the poverty of other offenders amount not in the whole to above 10*l.* on occasion of any one meeting; one third to the king, one third to the poor, and one third to the informer and to such persons as the justice shall appoint, having regard to their diligence in discovering, dispersing, and punishing of the said conventicles.

And every person who shall suffer any such meeting in his house, outhouse, barn, or backside, shall forfeit 20*l.* in like manner; and in case of his inability, it shall be levied on the goods of such persons who shall be convicted of being present.

If the penalty exceeds 10*l.* an appeal lies to the sessions. And if the party is there found guilty by a jury, he shall pay treble costs. And no other court whatsoever shall intermeddle, but the quarter sessions only.

And justices and constables may with what force they think fit, upon refusal to open, break open doors where they shall be informed such conventicle is, and take the offenders into custody. And on certificate from any justice of the peace of his particular information or knowledge of such unlawful meeting, and that he is not able, with such assistance as he can get, to suppress the same; any commissioned officer of the militia, or other his majesty's forces, with such troops or companies of horse and foot, and also the sheriff, and other ministers of justice, with such

other assistance, as they shall think meet, or can get in readiness with the soonest, shall repair to the place, and by the best means they can, shall dissolve, dissipate, and prevent such meeting, and take the offenders into custody.

Thus stood the laws at the revolution.

Now by the aforesaid act of toleration, made in the first year of *William and Mary*, it is enacted, that neither the statutes aforesaid, nor any other made against papists and popish recusants (except the statutes of the 25 C. 2. c. 2. and the 30 C. 2. §. 2. c. 1. hereafter mentioned) shall extend to any person dissenting from the church of *England*, who shall be qualified in the manner following;

(1) They shall at the general sessions of the peace, take the oaths of allegiance, supremacy, and abjuration (1 G. c. 13).

(2) They shall also there make and subscribe the declaration of the 30 C. 2. §. 2. c. 1. against popery.

(3) The place of meeting shall be certified to the bishop of the diocese, or to the archdeacon of the archdeaconry, or to the justices of the peace at the general or quarter sessions, and registered in the said bishop's or archdeacon's court, or recorded at such sessions. And the register, or clerk of the peace, shall register or record the same, and give certificate thereof to any who shall demand it, for which no more shall be taken than 6d.

(4) The doors of the place where they meet shall not, during such time of their meeting, be locked, barred, or bolted.

(5) They shall not in writing deny the doctrine of the Blessed Trinity.

2. What hath hitherto been observed, regardeth all protestant dissenters in general. There are besides certain other laws, which concern their *teachers and preachers only*. Which are these three that follow;

(1) By the 17 C. 2. c. 2. No person, who shall take upon him to teach or preach in any meeting or conventicle, under pretence of any exercise of religion, shall, unless only in passing upon the road, or unless required by legal process, come within 5 miles of a city, town corporate, or borough; nor shall be schoolmaster, or take any boarders or tablers to be instructed by himself or any other, without taking an oath of allegiance therein mentioned, on pain of 40*l.* one third to the king, one third to the poor, and one third to him who shall sue in the courts at *Westminster*, assizes, or sessions. And two justices, on oath of the offence, may commit them for six months.

(2) And by the 22 C. 2. c. 1. If any person shall take upon him to preach or teach in any meeting or conventicle, in other manner than according to the practice of the church of *England*, he shall forfeit for the first offence 20*l.* and for every other offence 40*l.* And if he be a stranger, or in the judgment of the justice of the peace before whom he is convicted, unable to pay, it may be levied on the goods of any person present.

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(3) And by the 13 & 14 C. 2. c. 4. s. 14. No person shall presume to consecrate and administer the sacrament before he be ordained priest, according to the form and manner of the church of England.

Now by the aforesaid act of toleration, it is provided, that no person dissenting from the church of England, in holy orders, or pretended holy orders, or pretending to holy orders, nor any preacher or teacher of any congregation of dissenting protestants, shall be liable to any of the aforesaid penalties, who shall be qualified as follows :

- (1) He shall at the sessions take the oaths aforesaid.
- (2) He shall there make and subscribe the declaration of the 30 C. 2. s. 2. c. 1.
- (3) He shall there also declare his approbation of, and subscribe the 39 articles, except the 34th, 35th and 36th (concerning the quality, examination, and subscription of such as are to be made ministers), and except these words of the 20th article, *viz.* [*the church hath power to decree rites or ceremonies, and authority in controversies of faith, and yet*]: All which shall be entred of record in court; for which the clerk of the peace shall have 6 *d.* and no more.
- (4) The place for worship shall be certified as before.
- (5) The doors of the place, where he shall preach or teach, shall not be locked, barred, or bolted.
- (6) He shall not deny, in his preaching or teaching, the doctrine of the Blessed Trinity.

3. Furthermore, there are besides the aforesaid general laws, certain other penal laws, affecting the *quakers* in particular: namely, these two ;

(1) By the 5 *El.* c. 1. If any person shall refuse to take the oaths of allegiance and supremacy, duly tendred, he shall incur a *præmunire*.

(2) And by the 13 & 14 C. 2. c. 1. If any person, who shall maintain that the taking of an oath is unlawful, shall refuse an oath duly tendred, he shall forfeit a sum not exceeding 5 *l.* for the first offence, 10 *l.* for the second, and for the third shall abjure the realm or be transported.

But now by the act of toleration, quakers shall be discharged of the penalties of these laws, and of all others made against popish recusants, or protestant non-conformists, and shall enjoy all other benefits, under the like limitations, which any other dissenters enjoy, on their qualifying themselves in the same manner as other dissenters ; except that instead of the oaths at sessions, they shall be allowed to make and subscribe a declaration of fidelity, and take the effect of the abjuration oath, and to subscribe a profession of their christian belief (all of which are inserted under title *Oaths*.)

4. And as to *Anabaptists* in particular, it is enacted by the said act of toleration, that whereas some dissenting protestants scruple the baptizing of infants,—Every person in pretended holy orders,
or

or pretending to holy orders, or preacher, or teacher, that shall take the oaths, and make and subscribe the declaration, and subscribe the 39 articles, except as in the case of other dissenting teachers as before, and except also part of the 37th article touching infant baptism, shall enjoy the same privileges as other dissenting teachers.

II. Protestant dissenters intitled to certain privileges by the act of toleration.

Besides the exemption from penalties, his majesty's protestant subjects are by the act of toleration intitled to certain privileges : which are of two kinds ; 1. Such as concern all protestant dissenters in general. 2. Such as concern their teachers in particular.

1. As to all *protestant dissenters in general*.—They shall not be prosecuted in any ecclesiastical court, for or by reason of their not conforming to the church of England. — But this shall not exempt them from paying of tithes, or other parochial duties, or any other duties to the church or minister, nor from any prosecution in any ecclesiastical court, or elsewhere, for the same.

Since this act, Mr. *Hawkins* observes from 3 *Lev.* 376. a prohibition will lie to the spiritual court proceeding against persons for incontinency, who have been married in a licensed conventicle. The case was this ; Two persons, who were published and married in a conventicle, were afterwards libelled against in the spiritual court, for incontinence and fornication ; and upon moving for a prohibition, time was assigned to shew cause why it should not go, and the proceedings in the ecclesiastical court were stayed in the mean time. Afterwards, it was agreed that a prohibition should be granted, and that the plaintiff should declare ; that so, upon demurrer, the point might be tried. But what the judgment was, or whether the cause proceeded to trial, doth not appear by the report. *Cod.* 617.

Mr. *Hawkins* likewise observes (1 *Haw.* 12.) that it having been doubted whether dissenting schoolmasters, as such, were exempted by the toleration act from the penalties inflicted upon them in the several acts against dissenters, it was farther enacted by the 12 *An. c.* 7. that whoever shall keep any school or seminary, or teach any youth as tutor or schoolmaster (unless he instruct them only in reading, writing, arithmetick, or such mathematical learning as relates to navigation, or some mechanical art, and that in the *English* tongue) without having first subscribed the declaration of the 13 & 14 *C.* 2. relating to conformity with the church of *England*, and without a licence from the bishop, he shall be imprisoned for three months. But this was repealed by the 5 *G.* c. 4. So that the doubt is left where it was.

Mr. *Shaw* in his parish law, p. 68. says, it is held (but doth not say by whom) that dissenters by the act of toleration are not exempted, either from the penalties of the 1 *J. c.* 4. or of the 13 & 14 *C.* 2. c. 4. against teaching a school without licence from the bishop.

In the case of *K. and Davison, T. 12 W.* as reported both by *Salkeld* and *L. Raymond, Davison*, a quaker, on an *habeas corpus* upon a writ of *excommunicato capiendo*, for teaching school without licence, was admitted to bail, till it should be determined whether this was an offence. But it doth not appear from either of those reports, what was the determination. 1 *Salk.* 105. *L. Raym.* 603.

Upon the whole, it seemeth somewhat strange, that in a case of so much importance as is the education of children, this matter during the space of so many years hath not yet been settled beyond all doubt.

Moreover; If any person dissenting from the church of *England*, shall be appointed to the office of high constable, petit constable, churchwarden, overseer of the poor, or any other parochial or ward office, and such person shall scruple to take upon him any of the said offices in regard of the oaths, or any other matter or thing, required by the law to be taken or done, in respect of such office, every such person shall and may execute such office by a sufficient deputy by him to be provided, that shall comply with the laws on this behalf. Provided, that the deputy be allowed and approved by such persons, and in such manner, as such officers should by law have been allowed and approved.

2. *As to their teachers or preachers.*—Every teacher or preacher, in holy orders, or pretended holy orders, that is a minister, preacher, or teacher of a congregation, that shall take the oaths, and subscribe the declaration and articles as aforesaid, shall be thenceforth exempted from serving upon any jury, or from being chosen or appointed to bear the office of churchwarden, overseer of the poor, or any other parochial or ward office, or other office in any hundred, city, town, parish, division, or wapentake.

But this seems clearly not to extend to *quaker* teachers or preachers; for they are neither in *holy orders*, nor *pretended holy orders*. It is true, by a subsequent statute of the 7 & 8 *W.* quakers are exempted from serving on *juries*; but neither by that, nor any other act, are any quakers exempted from serving the office of churchwarden, overseer of the poor, or other parochial or ward office, by themselves, or a sufficient deputy to be by them provided.

III. Laws against dissenters not altered by the act of toleration.

1. No clause in the toleration act shall give any ease or benefit, to any popish recusant; or to any that shall deny in preaching or writing the doctrine of the Trinity. 1 *W. c.* 18. *s.* 17.

And every justice of the peace may at any time require any person that goes to any meeting for the exercise of religion, to make and subscribe the said declaration, and to take the said oaths (or if quakers, the declaration of fidelity); and upon refusal thereof, such justice shall commit such person to prison, and shall certify his name to the next sessions; and if he shall refuse again

to make and subscribe the declaration there, he shall be taken for a popish recusant convict, and suffer accordingly. *Id.* s. 12.

2. The toleration act shall not extend to the statute of the 25 C. 2. c. 2. which requires, that all persons in office shall receive the sacrament, according to the usage of the church of *England*.

3. The toleration act shall not extend to the statute of 30 C. 2. s. 2. c. 1. which disables persons from sitting in either house of parliament, or coming to court, who shall not subscribe the declaration therein mentioned, against popery.

IV. Laws relating to protestant dissenters, made since the act of toleration.

1. If any person, dissenting from the church of *England* (not in holy orders, or pretended holy orders, or pretending to holy orders, nor any preacher or teacher of any congregation) who should have been intitled to the benefit of the toleration act, if he had duly taken, made, and subscribed the oaths and declaration, or otherwise qualified himself as required by the act, shall be prosecuted on any of the penal statutes, from which protestant dissenters are exempted by the said act,—shall at any time during such prosecution, take, make, and subscribe, the said oaths and declaration, or being a quaker shall qualify according to that act, either in the manner prescribed by that act, or before two justices who shall take and return the same to the next sessions to be there recorded; such person shall be intitled to the benefit of the act, as fully as if he had qualified himself in the time prescribed by the act, and shall from thenceforth be discharged from all the penalties and forfeitures incurred by force of any of the aforesaid penal statutes. 10 An. c. 2. s. 8.

2. And any preacher or teacher, duly qualified, shall be allowed to officiate in any congregation, altho' the same be not in the county where he was so qualified; provided that the place of meeting hath been duly certified, and registred, or recorded; and such teacher or preacher shall, if required, produce a certificate of his having so qualified himself, under the hand of the clerk of the peace where he was qualified; and shall also before any justice of such county where he shall so officiate, make and subscribe such declaration, and take such oaths as are mentioned in the act of toleration, if thereunto required. 10 An. c. 2. s. 9.

3. If any mayor, bailiff, or other magistrate, shall wilfully resort to, or be present at any publick meeting for religious worship, other than of the church of *England*, in the gown or other peculiar habit, or attended with the ensigns belonging to his office, he shall be disabled to hold the same, or any other publick office. 5 G. c. 4. s. 2.

Distillers. See Excise.

Distress.

- I. For what causes a distress shall be.*
- II. What goods may be distrained, and what not.*
- III. At what time the distress shall be taken.*
- IV. Where the distress shall be made.*
- V. That reasonable distress shall be taken.*
- VI. Manner of making distress.*
- VII. Distress how to be demeaned.*
- VIII. Of rescous and pound breach.*
- IX. Replevyng the distress.*
- X. Sale of the distress.*
- XI. Irregularity in the proceedings.*
- XII. Landlord re-entring on non-payment.*
- XIII. Case of tenant holding over.*
- XIV. Tenant deserting the premisses.*
- XV. Rent in case of an execution.*
- XVI. Rent on the death of tenant for life.*
- XVII. Of distress by warrant of justices of the peace.*

I. For what causes a distress shall be.

Rent in arrear.

1. **D**ISTRESS for rent must be, for rent in arrear; therefore it may not be made on the same day on which the rent becomes due; for if the rent is paid in any part of that day, whilst a man can see to count money, the payment is good.

Tender of payment.

2. It must not be after tender of payment: for if the landlord come to distrain the goods of his tenant for rent behind; before the distress, the tenant may upon the land tender the arrearages, and if after that a distress be taken, it is wrongful: And if the landlord have distrained; if the tenant, before the impounding thereof, tender the arrearages, the landlord ought to deliver the distress, and if he doth not, the detainer is unlawful. Even so it is, in case of a distress for damage feasant (or damage done by cattle trespassing), the tender of amends before the distress, maketh the distress unlawful; and after the distress, and before the impounding, the detainer unlawful. 2 Inst. 107.

But in this case, altho' the owner tender sufficient amends, yet he cannot take his beasts out of the pound, if the amends be refused; but he must replevy: and if it be found at the trial that the amends was not sufficient, the person on whom they trespassed shall

shall have damages; if the amends tendred were sufficient, then the owner of the beasts shall have damages. *Dr. & St.* 112.

3. The like remedy may be had by distress, impounding and sale, in cases of rents, seck rents of assize, and chief rents, as in chief rents. Seck rents and chief rents.
 case of rents reserved upon lease. 4 *G. 2. c. 28. f. 5.*

4. Where the agreement is not by deed, the landlord may recover a reasonable satisfaction, in an action on the case. 11 *G. 2.* by deed.
c. 19. f. 14.

5. Persons having rent in arrear, upon any lease determined, may distrain for such arrears after the determination of the lease, in the same manner as if it had not been determined; provided that such distress be made in six months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrear became due. 8 *An. c. 14. f. 6, 7.* Lease determined.

6. It was adjudged, that one cannot avow for two distresses for one and the same rent; but if the defendant had pleaded, that at the time of taking the first distress, there was not sufficient to be taken for the whole rent, upon the land, and that the first distress was but of such a value, it had been good. 3 *Salk.* 137. Two distresses for one rent.

7. If any distress and sale shall be made, for rent in arrear and due, when none is in truth due, the owner shall recover double value with full costs. 2 *W. Sess. 1. c. 5. f. 5.* Distraint where no rent is due.

And if the distress be taken of goods without cause, the owner may make *rescous*; but if they be distrained without cause, and impounded, the owner cannot break the pound and take them out, because they are in the custody of the law. 1 *Inst.* 47.

II. What goods may be distrained, and what not.

1. Distress for rent must be of a thing, whereof a valuable property is in somebody; and therefore dogs, bucks, does, conies, and the like, that are *feræ naturæ*, cannot be distrained. 1 *Inst.* 47. Valuable property.

2. Altho' it be of valuable property, as a horse; yet when a man or woman is riding on him, or an ax in a man's hand cutting of wood, and the like, they are for that time privileged, and cannot be distrained. 1 *Inst.* 47. Separate from the person.

But it is said, that if one be riding upon an horse damage feasant, the horse may be led to the pound with the rider upon him. 1 *Sid.* 422, 440.

And it hath been held, that horses joined to a cart, with a man upon it, cannot be distrained for rent (altho' they may for damage feasant); but both cart and horses may, if the man be not upon the cart. 1 *Ventr.* 36.

3. Valuable things shall not be distrained for rent, for benefit and maintenance of trades, which by consequent are for the common wealth, and are there by authority of law; as a horse in a smith's shop shall not be distrained for the rent issuing out of the shop, nor a horse in an hoftry, nor the materials in a weaver's shop for making of cloth, nor cloth or garments in a taylor's shop, nor sacks of corn or meal in a mill, nor any thing distrained for damage. For maintenance of trades.

damage feasant, for it is in custody of the law; and the like.

1 *Inst.* 47.

Tools of a man's
profession.

4. Beasts belonging to the plough shall not be distrained (which is the ancient common law of *England*, for no man shall be distrained by the utensils or instruments of his trade or profession, as the ax of the carpenter, or the books of a scholar) while goods or other beasts may be distrained. 1 *Inst.* 47.

But this rule holds only in distresses for rent arrear, amercia-ments, and the like; but doth not extend to cases, where a distress is given, in the nature of an execution, by any particular statute, as for poor rates, and the like. 3 *Salk.* 136.

Things fixed to
the freehold.

5. Furnaces, cauldrons, or other things fixed to the freehold, or the doors or windows of a house, or the like, cannot be distrained. 1 *Inst.* 47.

Money.

6. Money in a bag sealed may be distrained, but not out of a bag. *Read. Distr.*

Corn cut.

7. By the 2 *W. Seff.* 1. c. 5. Persons having rent arrear on any demise, lease, or contract, may seize and secure any sheaves or cocks of corn, or corn loose or in the straw, or hay being in any barn or granary, or upon any hovel, stack, or rick, or otherwise upon any part of the land charged with the rent, and may lock up or detain the same in the place where found, in the nature of a distress; so as the same be not removed to the damage of the owner, out of the place where found and seized, but be kept there (as impounded) till replevied or sold. S. 3.

Corn growing.

8. Also by the 11 *G.* 2. c. 19. The landlord may take and seize corn, grass, hops, roots, fruits, pulse, or other product growing, as a distress; and the same may cut, gather, make, cure, carry and lay up, when ripe, in the barns or other proper place on the premises; and if there shall be no barn or proper place on the premises, then in any other barn or proper place which he shall procure, so near as may be to the premises: the appraisement whereof shall be taken when cut, gathered, cured, and made, and not before. S. 8.

And notice of the place where the goods so distrained shall be lodged, shall in one week after the lodging thereof be given to the tenant, or left at the last place of his abode. S. 9.

Cattle escaped on
the premises.

9. Where a stranger's beasts escape into the land, they may be distrained for rent, tho' they have not been levant and couchant (that is, tho' they have not been in the ground for a good space of time, or so long as to have lain down and rose up again to feed) provided they are trespassers: But if the tenant of the land is in default, in not repairing his fences, whereby the beasts came into the land, the lessor cannot distrain such beasts, tho' they have been levant and couchant, unless he have given notice to the owner, and he suffer them to remain there afterwards. *Lutw.* 364.

For if the lessor had the lands in his own hands, he must repair the fences, and consequently he must see that his lessee doth it, for he is not to take advantage of his own default. 3 *Salk.* 136.

10. In the case of *Forwkes and Joyce, T. 1 W.* It was held by the court, that if a driver of cattle put them out to pasture, by way of agistment, tho' but for a night, and by leave both of the lessor and lessee, yet they may be distrained for rent, tho' they be upon the road to market. *2 Ventr. 50.* Cattle depastured.

But it is said, that this shall only be, for so much of the rent, as the pasturage of those cattle for that time shall amount unto.

III. At what time the distress shall be taken.

For a rent or service the lord cannot distrain in the night, but in the day time; and so it is of a rent charge; but for damage feasant, one may distrain in the night, otherwise it may be the beasts will be gone before he can take them. *1 Inst. 142.* In the night.

For before sun rising, or after sun set, no man may distrain but for damage feasant. *Mirroure c. 2. f. 26.*

And as to damage feasant, if a man come to distrain, and see the beasts in his soil, and the owner chase them out of purpose before the distress taken; yet the owner of the soil cannot distrain them, and if he doth, the owner of the cattle may rescue them, for the beasts must be damage feasant at the time of the distress. *1 Inst. 161.* Damage feasant.

IV. Where the distress shall be made.

Where;

1. The king's officers, as sheriffs and other, shall not take distresses in the fees wherewith churches in times past have been endowed; but distresses may be taken in possessions of the church newly purchased. *9 Ed. 2. c. 9.* church lands.

2. A man may distrain in places or lands within the fee, liable to distress, and not elsewhere. *52 H. 3. c. 15. 2 Inst. 131. Mir. Ch. 2. f. 26.* On the premises.

3. And by the *11 G. 2. c. 19.* The landlord may distrain any cattle or stock of the tenant, depasturing on any common appendant or appurtenant, or any ways belonging to the premises demised. *S. 8.* On the common.

4. No person (except the king's officers) shall take distresses in the king's highway. *52 H. 3. c. 15.* In the highway.

And the reason is, because the king's subjects ought to have free passage, as well to fairs and markets, as about their other affairs. But yet this shall not be taken, to make the distress utterly unlawful, so as to take advantage thereof in bar to an avowry, but to this purpose, that if the lord distrain in the highway, the tenant may have an action against him upon this statute. *2 Inst. 131, 132.*

5. But by the *11 G. 2. c. 19.* If any tenant for life, years, at will, sufferance, or otherwise, shall fraudulently or clandestinely convey off the premises his goods or chattels, to prevent the landlord from distraining; such landlord, or any person by him lawfully empowered, may in 30 days next after such conveying away, seize the same wherever they shall be found, and dispose of Carried off the premises.

Distress.

of them in such manner, as if they had been distrained on the premises. S. 1.

But no landlord shall distrain any goods sold *bona fide*, and for a valuable consideration, before such seizure made, to any person not privy to such fraud. S. 2.

And if any tenant shall so fraudulently convey his goods, or if any person shall wilfully aid him therein, or in concealing the same; every person so offending shall forfeit to the landlord double the value of such goods, to be recovered in any court of record at *Westminster*. S. 3.

But if the goods conveyed or concealed shall not exceed the value of 50*l.* the landlord or his agent may exhibit a complaint in writing, before two justices residing near, who may summon the parties, and determine the offence in a summary way; and on full proof of the offence, they shall by order under their hands and seals adjudge the offender to pay double the value of such goods to the landlord or his agent, at such time as they shall appoint: and if, having notice of such order, he shall refuse or neglect so to do, they shall by warrant levy the same by distress and sale; and for want of such distress, may commit the offender to the house of correction for six months, unless the money be sooner paid. S. 4.

Persons aggrieved by order of such justices, may appeal to the next general or quarter sessions; who may give costs to either party. S. 5.

And where the party appealing shall enter into recognizance, with one or two sureties, in double the sum so ordered to be paid, with condition to appear at such sessions; the order of the justices shall not be executed against him in the mean time. S. 6.

V. That reasonable distress shall be taken.

Distress to be reasonable.

Distresses shall be reasonable, and not too great; and he that taketh great and unreasonable distresses, shall be grievously amerced. 52 H. 3. c. 4.

For example, if the lord distrain two or three oxen for 12*d.* or the like small sum, and the owner bring a replevy of the oxen, and the lord avow the taking of them for the 12*d.*; of his own shewing, he shall make fine: or the party may have his action upon this statute. 2 Inst. 107.

If the lord distrain an ox, or horse, for a penny; if there were no other distress upon the land holden, the distress is not excessive: but if there were a calf, or a swine, or the like, then the taking of the ox or horse is excessive, because he might have taken a beast of less value. 2 Inst. 107.

VI. Manner of making distress.

Breaking gates.

1. Gates or inclosures may not be broken open, nor thrown down, to make a distress. 1 Inst. 161.

Opening doors.

2. Nor may the lessor enter into the tenant's house, unless the doors are open. *Read. Distr.*

3. Where

3. Where any goods fraudulently or clandestinely conveyed, shall be kept in any house, barn, stable, outhouse, yard, close, or place locked up, fastened, or otherwise secured, so as to prevent such goods from being seized as a distress; it shall be lawful for the landlord, or his agent, to seize the same (first calling to his assistance the constable or other peace officer; and in case of a dwelling house, oath being also first made before a justice of the peace, of a reasonable ground to suspect that such goods are therein) in the day time, to break open and enter such house or place, and to take and seize the same, as he might have done if they had been in any open place. 11 G. 2. c. 19. s. 7.

Aid of the constables and justices.

4. If a landlord comes into a house, and seizes upon some goods as a distress, in the name of all the goods of the house; that will be a good seizure of all. 6 Mod. 215.

Part in the name of the whole.

VII. Distress how to be demeaned.

1. He that distrains any thing that hath life, must impound it in a lawful pound, within three miles in the same county. 1 & 2 P. & M. c. 12. 1 Inst. 47.

Impounding off the premises.

Which pound is either *overt* or open, as in a pinfold made for such purposes, or in his own close, or in the close of another by his consent; and it is therefore called open, because the owner may give his cattle meat and drink, without trespass to any other, and then the cattle must be sustained at the peril of the owner: or it is a pound *covert* or close, as to impound the cattle in some part of his house; and then the cattle must be sustained with meat and drink at the peril of him that distraineth, and he shall not have any satisfaction therefore. 1 Inst. 47.

But if the distress be of utensils of household, or such like dead goods, which may take harm by wet or weather, or be stolen away; there he must impound them in a house, or other pound *covert*, within three miles in the same county; for if he impound them in a pound *overt*, he must answer for them. 1 Inst. 47.

2. And by 11 G. 2. c. 19. Any person distraining, may impound or otherwise secure the distress, of what kind soever it be, in such place, or on such part of the premises, as shall be most convenient; and may appraise, and sell the same, as any person before might have done off the premises. S. 10.

Impounding on the premises.

3. Cattle distrained may not be worked or used, unless for the owner's benefit, as a cow milked; much less may they be abused or hurt. Cro. Jac. 148.

Using the goods distrained.

4. If a distress dies in the pound, the distrainer may distrain again. 1 Salk. 248.

Distress dying.

5. It is the distrainer's own fault, if he puts the distress in a pound which will not hold it; but he cannot justify the tying of cattle in the pound; and if he ties a beast, and it is strangled, he must pay damages. 1 Salk. 248.

Dying by distress.

VIII. Of rescous and pound-breach.

Rescous and pound-breach.

1. By the common law, if a man break the pound, or the lock of it, or part of it, he greatly offendeth against the peace, and doth trespass to the king, and to the lord of the fee, and to the sheriffs, and hundredors, in breach of the peace, and to the party, and to the delaying of justice; and therefore hue and cry is to be levied against him, as against those who break the peace. *Mir. c. 2. f. 26.*

2. And by statute, on any pound-breach or rescous, of goods distrained for rent, the person grieved thereby, shall in a special action upon the case, recover treble damages and costs against the offender, or against the owner of the goods, if they be afterwards found to have come to his use. *2 W. Seff. 1. c. 5. f. 4.*

Treble damages and costs] In the case of Sir Wilfred Lawson v. Storey, *M. 6 W.* It was adjudged, that the costs shall be trebled as well as damages. *L. Raym. 20.*

3. When a man hath taken a distress, and the cattle distrained, as he is driving them to the pound, go into the house of the owner; if he that took the distress demand them of the owner, and he deliver them not, this is a rescous in law. *1 Inst. 161.*

IX. Replevying the distress.

Replevy.

1. The sheriff of every county shall, at his first county day, or in two months after he hath received his patent of office, appoint four deputies at the least, dwelling not above 12 miles one distant from another, to make replevies; on pain of 5 *l.* a month, half to the king, and half to him that shall sue in any court of record. *1 & 2 P. & M. c. 12. f. 3.*

2. And the sheriff, or other officer having authority to grant replevins, shall in every replevin of a distress for rent, take in his own name, from the plaintiff and two sureties, a bond in double the value of the goods distrained, to be ascertained on the oath of one witness, and conditioned for prosecuting the suit with effect, and without delay, and for duly returning the goods distrained, in case a return shall be awarded; before any deliverance be made of the distress: and the sheriff shall assign such bond to the avowant, or person making *conusance*. *11 G. 2. c. 19. f. 23.*

Note, *avowry* is, where one takes a distress, and the person distrained sues a replevin; then he that took the distress must *avow* and justify in his plea, for what cause he took it, if he took it in his own right; and this is called an *avowry*: if he took it in the right of another, then, when he hath shewed the cause, he must make *conusance* of the taking, as bailiff or servant to him, in whose right he took it. *Terms of the L.*

X. Sale

X. Sale of the distress.

Where any goods shall be distrained for rent reserved and due, *Sale.* upon any demise, lease, or contract, and the tenant, or owner of the goods distrained, shall not within 5 days next after such distress taken, and notice thereof (with the cause of such taking) left at the chief mansion house, or other most notorious place on the premises, replevy the same; in such case the person distraining shall, with the sheriff or under-sheriff of the county, or with the constable of the hundred, parish, or place, where such distress shall be taken, cause the goods and chattels so distrained to be appraised by two sworn appraisers (whom such sheriff, under-sheriff, or constable shall swear) to appraise the same truly, according to the best of their understandings; and after such appraisement, shall sell the same for the best price can be gotten for them, for satisfaction of the rent, and charges of the distress, appraisement, and sale; leaving the overplus (if any) with the sheriff, under-sheriff, or constable, for the owner's use. *2 W. Sess. 1. c. 5. s. 2.*

And by the *1 & 2 P. & M. c. 12.* No person shall take for keeping in pound, or impounding any distress, above *4 d.* for any one whole distress; and where less hath been used, there to take less: on pain of *5 l.* to the party grieved, besides what he shall take above *4 d.* *S. 2.*

XI. Irregularity in the proceedings.

Where any distress shall be made, for any kind of rent justly *Irregularity.* due, and any irregularity shall be afterwards done by the party distraining, or his agent; the distress shall not be deemed unlawful, nor the distrainer a trespasser *ab initio*, but the party aggrieved may recover satisfaction for the special damage, in an action of trespass or on the case; and if he recover, he shall have full costs. *11 G. 2. c. 19. s. 19.*

But no tenant shall recover on such action, if tender of amends hath been made before the action brought. *S. 20.*

XII. Landlord re-entring on non-payment.

Where half a year's rent shall be in arrear, and the landlord *Re-entring.* hath right by law to re-enter for non-payment; he may, without any formal demand of re-entry, serve a declaration in ejectment, and on recovering judgment and execution, shall hold the premises discharged from the lease. *4 G. 2. c. 28. s. 2.*

XIII. Case of tenant holding over.

1. If any tenant for life or years, or other person who shall *Holding over af-* come into possession by, from, or under him, shall wilfully hold *ter the term ex-* over any lands, after the determination of such term, and after *pired.* demand made, and notice in writing given for delivering the possession

session thereof; he shall, for the time that he shall so hold over, pay double the yearly value thereof, to be recovered by action of debt, in any court of record. 4 G. 2. c. 28. s. 1.

Holding over after having given notice to quit.

2. If any tenant shall give notice of his intention to quit the premises, at a time mentioned in such notice, and shall not accordingly deliver up the possession thereof at the time; he shall from thenceforth pay double rent, to be recovered in like manner as the single rent. 11 G. 2. c. 19. s. 18.

XIV. Tenant deserting the premises.

Tenant deserting.

If any tenant at rack rent, or where the rent reserved shall be full three fourths of the yearly value of the demised premises, who shall be in arrear for one year's rent, shall desert the premises, and leave the same uncultivated or unoccupied, so as no sufficient distress can be had; two justices at the request of the landlord may go and view the same, and affix on the most notorious part of the premises, notice (A) in writing, what day (at the distance of 14 days at the least) they will return to take a second view; and if on such second view, the tenant shall not appear and pay the rent, or there shall not be sufficient distress on the premises, then the justices may put the landlord into possession, and the lease as to such demise shall from thence be void. 11 G. 2. c. 19. s. 16.

But the tenant may appeal to the next justice or justices of assize; who may award costs to either party. S. 17.

And the justices in this, and all other the like cases, ought to make a record (B) of the whole proceedings, to be produced afterwards in case of an action brought against the landlord by such tenant. For the justices are not to carry witnesses with them about the country, to testify what they shall act as judges of record; nor doth it seem requisite, that they should go and testify in a court upon their oaths, what they shall have acted in such cases; but to make a record in writing under their hands and seals, of all that hath been done: which record being produced in court, seemeth to be the proper evidence in all such cases, for that the law reposeth an intire confidence therein, and it shall not be gainsaid; otherwise there would be no end of things.

XV. Rent in case of an execution.

Execution.

No goods being on any messuage, lands, or tenements, leased for life, term of years, at will, or otherwise, shall be liable to be taken by execution, unless the party, at whose suit the execution is sued out, shall before the removal of such goods from off the premises, pay to the landlord or his bailiff all such rent as shall be then due for the premises, provided that it amount not to more than one year's rent; and if the said arrears shall exceed one year's rent, then the party paying such landlord one year's rent, may proceed to execute his judgment. 8 An. c. 14. s. 1.

XVI. Rent

XVI. Rent on the death of tenant for life.

Where any tenant for life shall die, before or on the day on which the rent was made payable, on any demise or lease which determined on the death of such tenant for life; the executors or administrators of such tenant for life, may in an action on the case recover, if such tenant for life die on the day on which the same was made payable, the whole, or if before such day, then a proportion of such rent, according to the time such tenant for life lived. 11 G. 2. c. 19. s. 15. Tenant for life dying.

XVII. Of distress by warrant of justices of the peace.

By the 27 G. 2. c. 20. It is enacted as follows: *In all cases where any justice of the peace is or shall be required or empowered by any act of parliament, to issue a warrant of distress, for the levying of any penalty inflicted, or any sum of money directed to be paid by such act; it shall be lawful for the justice granting such warrant, therein to order and direct the goods and chattels so to be distrained to be sold and disposed of, within a certain time to be limited in such warrant, so as such time be not less than 4 days, nor more than 8 days, unless the penalty or sum of money for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, be sooner paid.*

And the officer making such distress, shall and may deduct the reasonable charges of taking, keeping, and selling such distress, out of the money arising by such sale; and the overplus (if any) after such charges, and also the said penalty or sum of money, shall be satisfied and paid, shall be returned on demand, to the owner of the goods so distrained: and the officer executing such warrant, if required, shall shew the same to the person whose goods are distrained, and shall suffer a copy thereof to be taken.

But this shall not extend, to alter any provisions relating to distresses to be made for the payment of tithes and church rates by the people called quakers, contained in the acts of the 7 & 8 W. c. 34. and the 1 G. 2. c. 6.

Officer may deduct the reasonable charges] But here is no power given to the justices, to ascertain such charges; therefore it seemeth, that the officer executing the warrant shall be the sole judge thereof in the first instance, and afterwards, if the owner of the goods distrained shall be dissatisfied, the reasonableness thereof shall be determined by a judge and jury upon an action brought.

But by special statutes, this power of ascertaining the charges of distress and sale, is sometimes given to the justices, as is set forth in this book under the respective titles.

Tithes and church rates by the people called quakers] The above-said statutes of the 7 & 8 W. c. 34. and 1 G. 2. c. 6. relate not only to tithes and church rates (by which last seemeth only to be understood the churchwardens rate for the repair and other

uses of the church), but also to any customary or other rates, dues, or payments, belonging to any church or chapel, which of right by law and custom ought to be paid for the stipend or maintenance of any minister or curate officiating in any church or chapel. Therefore for any thing that appears from the words of this statute, unless it be in the case of *tithes* or *church rates*, the justices may order the distress for those other dues and payments to be detained for a certain time, and the officer may deduct the charges not only of *distraining*, but also of *keeping* and *selling* the distress; whereas by those former acts abovementioned, the officer was only allowed to deduct the necessary charges of *distraining*.

A. Notice to be affixed on the premises being deserted.

Abraham Sutcliffe,

TAKE notice, that upon the complaint of Eleanor Ashton of Underley in the county of Westmorland, widow, made unto us John Moore, esquire, and Richard Burn, clerk, two of his majesty's justices of the peace for the said county, that you the said Abraham Sutcliffe have deserted the messuage and tenement called ——— consisting of ——— situate, lying, and being at Underley aforesaid in the county aforesaid, unto you demised at rack rent by her the said Eleanor Ashton, and that there is in arrear and due from you the said A. S. unto her the said E. A. one whole year's rent for the said demised premises, and that you have left the said premises uncultivated and unoccupied, so that no sufficient distress can be had, to countervail the said arrears of rent; we the said justices (having no interest, nor either of us having any interest, in the said demised premises) on the said complaint as aforesaid, and at the request of her the said E. A. have this day come upon and viewed the said demised premises, and do find the said complaint to be true; and on the 28th day of this present month of February we will return to take a second view thereof, and if upon such second view, you, or some person on your behalf, shall not appear and pay the said rent in arrear, or there shall not be sufficient distress on the said premises, then we the said justices will put her the said E. A. into the possession of the said demised premises, according to the form of the statute in such case made and provided. In witness whereof we have hereunto set our hands and seals, and have caused this notice to be affixed on the out door of the mansion house, the same being the most notorious part of the said premises, this fourth day of February in the 27th year of the reign of our sovereign lord George the second of Great Britain, France, and Ireland, king.

B. Record of putting the landlord into possession.

Westmorland. **B**E it remembered, that on the fourth day of February in the 27th year of the reign of our sovereign lord George the second of Great Britain, France, and

and Ireland, king, defender of the faith, and so forth, at Underley in the said county, Eleanor Ashton of Underley aforesaid, in the county aforesaid, widow, complained unto us John Moore, esquire, and Richard Burn, clerk, two of the justices of our said lord the king, assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, That she the said Eleanor Ashton did demise at rack rent unto Abraham Sutcliffe of _____ yeoman, the messuage and tenement called _____ consisting of _____ situate, lying, and being at Underley aforesaid, in the county aforesaid; and that on the said fourth day of February in the year aforesaid, there was in arrear and due unto her the said E. A. from him the said A. S. tenant of the said demised premises, one whole year's rent thereof; and that he the said A. S. had deserted the said demised premises, and left the same uncultivated and unoccupied, so as no sufficient distress could be had, to countervail the said arrears of rent: whereupon the said E. A. then and there, to wit, on the said fourth day of February in the year aforesaid, at Underley aforesaid, in the county aforesaid, requested of us so as aforesaid being justices, to her in this behalf that a due remedy should be provided, according to the form of the statute in that case made. Which complaint and request by us the aforesaid justices being heard, we the said John Moore, esquire, and Richard Burn, clerk, justices aforesaid (having no interest, nor either of us having any interest, in the said demised premises) on the said fourth day of February in the year aforesaid, at Underley aforesaid, in the county aforesaid, did personally go upon and view the said demised premises, and then and there upon our own proper view did find the said complaint to be true, and did then and there affix on the most notorious part of the said demised premises, to wit, upon the out door of the mansion house aforesaid, a notice in writing under our hands and seals, that we the said justices, on the 28th day of the same month of February in the year aforesaid, would return to take a second view thereof. Upon which said 28th day of February in the 27th year aforesaid of our said sovereign lord, we the said justices do now return, come upon, and take a second view of the premises aforesaid, and there upon our own proper view do find, that he the said Abraham Sutcliffe doth not appear, nor any person on his behalf doth appear, and pay the said rent in arrear, and that there is no sufficient distress upon the premises aforesaid, nor upon any part thereof, to countervail the said arrears of rent. Therefore we the said justices, at Underley aforesaid, in the county aforesaid, on the 28th day of February aforesaid in the year aforesaid, do put the said Eleanor Ashton into the possession of the said demised premises, according to the form of the statute aforesaid. In witness whereof, we the said justices, unto this record do set our seals, at Underley aforesaid, in the county aforesaid, on the said 28th day of February in the 27th year aforesaid of the reign of our said sovereign lord, George the second of Great Britain, France, and Ireland, king.

Escape.

Distringas. See Process.

Divine Service. See Publick Worship.

Dogs. See Game.

Door breaking open. See Arrest.

Dower. See Forfeiture.

Drover. See Cattle.

Drunkenness. See Alehouses.

Duelling. See Homicide.

Dyers. See Woollen Manufacture.

Eggs. See Game.

Egyptians. See Vagrants.

Embracery. See Maintenance.

Escape.

THIS is to be understood of escapes in *criminal* cases; and not in *civil* cases, as for debt, or the like.

Escape, what.

An escape is, where one that is arrested gaineth his liberty, before he is delivered by course of law. *Terms de la ley.*

Several kinds thereof.

Escapes are of three kinds. 1. By a person who hath the offender in his custody; this is properly called an *escape*. 2. Caused by a stranger; this is commonly called a *rescue*. 3. By the party himself; either without force, which is simply an escape, or with force, which is *prison-breaking*. *Rescous* and *prison-breaking* are treated of under their respective titles; and this title treats only of escapes properly so called. Concerning which we will treat in the following order:

I. Of escape by the party himself.

II. Escape suffered by a private person.

III. Escape suffered by an officer.

IV. What is a voluntary, and what a negligent escape.

V. Concerning the retaking of a person escaped.

VI. Indictment for an escape.

VII. Trial and conviction for an escape.

VIII. Punishment of an escape.

IX. Aiding in attempting to escape.

I. Escape

I. *Escape by the party himself.*

As all persons are bound to submit themselves to the judgment of the law, and to be ready to be justified by it; whoever in any case refuses to undergo that imprisonment which the law thinks fit to put upon him, and frees himself from it by any artifice, before such time as he is delivered by due course of law, is guilty of a high contempt, punishable with fine and imprisonment. 2 Haw. 122.

But escape committed by the party himself, belongs more properly to the title *Prison-breaking*.

II. *Escape suffered by a private person.*

It seems to be a good general rule, that wherever any person hath another lawfully in his custody, whether upon an arrest made by himself or another, he is guilty of an escape, if he suffer him to go at large, before he hath discharged himself of him, by delivering him over to some other who by law ought to have the custody of him. 2 Haw. 138.

And the law is generally the same, in relation to escapes suffered by private persons, as by officers. 2 Haw. 138.

III. *Escape suffered by an officer.*

1. In order to make it an escape, there must be an actual arrest; and therefore, if an officer having a warrant to arrest a man, see him shut up in a house, and challenge him as his prisoner, but never actually have him in his custody, and the party get free, the officer cannot be charged with an escape. 2 Haw. 129.

2. And as there must be an actual arrest, such arrest must be also justifiable; for if it be either for a supposed crime, where no such crime was committed, and the party neither indicted nor appealed, or for such a slight suspicion of an actual crime, and by such an irregular mittimus as will neither justify the arrest nor imprisonment, the officer is not guilty of an escape, by suffering the prisoner to go at large. 2 Haw. 129.

3. And as the imprisonment must be justifiable, so it must be also for a criminal offence. 2 Haw. 129.

4. Also if a prisoner be acquitted, and detained only for his fees, it will not be criminal to suffer him to escape, tho' the judgment were, that *he be discharged paying his fees*, so that till they be paid, the first imprisonment continued lawful as before; for inasmuch as he is detained, not as a criminal, but only as a debtor, his escape cannot be more criminal than that of any other debtor: Yet if a person convicted of a crime, be condemned to imprisonment for a certain time, and also *till he pay his fees*, and he escape after such time is elapsed, without paying them, perhaps such escape may be criminal, for that it was part of the punishment that the imprisonment be continued till the fees should be paid;

but it seems, that this is to be intended where the fees are due to others as well as to the gaoler, for otherwise the gaoler will be the only sufferer by the escape, and it will be hard to punish him for suffering an injury to himself only, in the non-payment of a debt in his power to release. *2 Haw. 129, 130.*

Too much liberty, an escape.

5. Also, it is an escape in some cases, to suffer a prisoner to have greater liberty, than by the law he ought to have; as to admit a person to bail, who by law ought not to be bailed, but to be kept in close custody. *2 Haw. 130.*

So if a gaoler, or other officer, shall license his prisoner to go abroad for a time, and to come again; this is an escape, because the prisoner is found out of the bounds of his prison, tho' the prisoner return again, according as he shall be prescribed. *Dalt. c. 159.*

Losing sight, an escape.

6. If the gaoler so closely pursue the prisoner who flies from him, that he retakes him, without losing sight of him, the law looks on the prisoner so far in his power all the time, as not to adjudge such a flight to amount at all to an escape; but if the gaoler once lose sight of the prisoner, and afterwards retake him, he seems in strictness to be guilty of an escape. And if he kill him in the pursuit, he is in like manner guilty of an escape, tho' he never lost sight of him, and could not otherwise take him, not only because the king loses the benefit he might have had by the forfeiture on his attainder, but also because the publick justice is not so well satisfied by the killing him in such an extrajudicial manner. *2 Haw. 130.*

IV. What is a voluntary, and what a negligent escape.

Voluntary escape, what.

1. Wherever an officer, who hath the custody of a prisoner, charged with and guilty of a capital offence, doth knowingly give him his liberty, with an intent to save him from his trial or execution, this is a voluntary escape. *2 Haw. 130.*

Negligent escape, what.

2. A negligent escape is, when the party arrested or imprisoned doth escape against the will of him that arrested or imprisoned him, and is not freshly pursued and taken again, before he hath lost the sight of him. *Dalt. c. 159.*

Suffering a prisoner to kill himself.

3. If the constable or other officer, shall voluntarily suffer a thief, being in his custody to go into the water to drown himself, this escape is felony in the constable, and the drowning is felony in the thief: Otherwise if the thief shall suddenly without the assent of the constable, kill, hang, or drown himself, this is but a negligent escape in the constable. *Dalt. c. 159.*

V. Concerning the retaking of a person escaped.

Let go voluntarily, cannot be retaken.

1. If an officer hath arrested a man by virtue of a warrant, and then taketh his promise that he will come again, and so letteth him go; the officer cannot after arrest or take him again by force of his former warrant, for that this was by the consent of the officer: But if he return, and put himself again under the custody of

of the officer, it seems that it may be probably argued, that the officer may lawfully detain him, and bring him before the justice in pursuance of the warrant. *Dalt. c. 169. 1 Harw. 81.*

2. But if the party arrested had escaped of his own wrong, Fresh suit. without the consent of the officer, now upon fresh suit, the officer may take him again and again, so often as he escapeth, altho' he were out of view, or that he shall fly into another town or county, and bring him before the justice upon whose warrant he was first arrested. *Dalt. c. 169.*

And it is said generally in some books, that an officer who hath negligently suffered a prisoner to escape, may retake him wherever he finds him, without mentioning any fresh pursuit; and indeed since the liberty gained by the prisoner is wholly owing to his own wrong, there seems to be no reason he should take any manner of advantage from it. *2 Harw. 131, 132.*

3. And wherever a person is lawfully arrested for any cause, Breaking open doors to retake. and afterwards escapes, and shelters him in an house, the doors may be broke open to take him, on refusal of admittance. *2 Harw. 87.*

4. It is perhaps the better opinion, that wherever a prisoner, Retaking excuseth not the escape. by the negligence of his keeper, gets so far out of his power, that the keeper loses sight of him, the keeper is punishable for the escape, notwithstanding he retook him immediately after: And it is clear, that he cannot excuse himself from an escape, by killing a prisoner in the pursuit, tho' he could not possibly retake him; but must in such case be content to submit to such punishment, as his negligence shall appear to deserve. *2 Harw. 132.*

VI. Indictment for an escape.

It seems clear, that every indictment (A) for an escape, whether negligent or voluntary, must expressly shew, that the prisoner was actually in the defendant's custody for such a crime; and that he went at large; And if for a voluntary escape, that the defendant feloniously and voluntarily suffered him to go at large; and must set forth, not the felony in general, but the particular kind of felony: But it seems questionable, whether such certainty, as to the nature of the crime, be necessary in an indictment for a negligent escape; for that it is not material in this case, whether the person who escaped were guilty or not. *2 Harw. 133, 229.* Indictment.

VII. Trial and conviction for an escape.

1. If the prisoner be of record in a court, and the gaoler being called, cannot give an account where he is, this is a conviction of an escape; but seems not a conviction of a voluntary escape, unless the gaoler confesseth it: And the gaoler may be fined in such a case; but not convicted of felony, without indictment or presentment. *1 H. H. 599, 603.* Gaoler not producing him, a conviction.

Felony to be
tried before the
escape.

2. And it seems to be clear, that a keeper who voluntarily suffers another to escape, who was in his custody for felony, cannot be arraigned for such escape as for felony, until the principal be attainted, for that the felony of the prisoner shall not be tried between the king and keeper, because the prisoner is a stranger thereunto; yet he may be indicted and tried for it as a misprision, before the attainder of the principal offender. 2 *Haw.* 135. 2 *Inst.* 591, 592.

VIII. Punishment of an escape.

Punishment of
escape before
arrest.

1. If a felon escapes before arrest, it is not punishable in him as felony; but for the flight he forfeits his goods when presented. *Hale's Pl.* 111.

Of escape by a
private person.

2. If a private person arrest a felon, and he escape by force from him, the township shall be amerced, but it seems it excuseth the party, because he cannot raise power to assist him: but if a constable, or other officer, hath the custody of a prisoner, bringing him to the gaol, it seems that a simple escape by the rescue of the prisoner himself, doth not wholly excuse him, because he may take sufficient strength to his assistance. 1 *H. H.* 601.

Of a negligent
escape.

3. Wherever a person is found guilty upon an indictment or presentment of a negligent escape of a criminal actually in his custody, he is punishable by fine and imprisonment, according to the quality of the offence. 2 *Haw.* 136, 139. 1 *H. H.* 600, 604.

And it seems to be the better opinion, that a sheriff is as much liable to answer for a negligent escape suffered by his bailiff, as if he had actually suffered it himself, and that the court may charge either the sheriff or bailiff for such an escape; and if a deputy gaoler be not sufficient to answer a negligent escape, his principal must answer for him. 2 *Haw.* 135.

Note; Mr. *Hawkins*, altho' he is one of the most accurate of all writers, yet hath inserted in this place certain penalties for escapes, which were expired above 200 years before. 2 *Haw.* 137.

If a prisoner for felony break the gaol, this seems to be a negligent escape in the gaoler, because there wanted either that due strength in the gaol, that should have secured him, or that due vigilance in the gaoler or his officers to have prevented it; and therefore it is lawful for the gaoler to hamper them with irons to prevent their escape; for if gaolers might not be punished for this as a negligent escape, they would be careless either to secure their prisoners, or to retake them that escape. 1 *H. H.* 601.

Of a voluntary
escape.

4. It seems to be generally agreed, that a voluntary escape suffered by an officer, amounts to the same kind of crime, and is punishable in the same degree, as the offence of which the party was guilty, and for which he was in custody, whether it be treason, felony, or trespass. 2 *Haw.* 134.

But yet a voluntary escape is no felony, if the act done were not felony at the time of the escape made, as in case of a mortal

mortal wound given, and the party not dying till after the escape; but the officer may be fined to the value of his goods. *Dalt.*

c. 159.

Also, a voluntary escape suffered by one who wrongfully takes upon him the keeping of a gaol, seems to be punishable in the same manner, as if he was never so rightfully intitled to such custody; for that the crime is in both cases of the same ill consequence to the publick: and there seems to be no reason that a wrongful officer should have greater favour than a rightful, and that for no other reason but because he is a wrongful one. *2 Harw. 134.*

But it seemeth to be clear, that no one is punishable as for felony, for the voluntary escape of a felon, but the person only who is actually guilty of it; and therefore that the principal gaoler is only finable for a voluntary escape suffered by his deputy; for that no one shall suffer capitally for the crime of another. *2 Harw. 135.*

And therefore, altho' in all civil causes, the sheriff is to be responsible, or the gaoler, at election, yet if the gaoler do voluntarily suffer a felon in his custody to escape; this, inasmuch as it reacheth to life, is felony only in the gaoler, that was immediately trusted with the custody, and not in the sheriff. *1 H. H. 597.*

For the escape must be voluntarily permitted in him that permitted it, which could not be in the high sheriff, tho' it were such in the gaoler, for he was not privy to it, and therefore could not do it feloniously; but it was a negligent escape in him, in trusting such a person with the custody of his prisoners, that would be false to his trust, and therefore the sheriff shall pay, but not corporally suffer for the miscarriage of his gaoler. *1 H. H. 597, 598.*

But altho' the felony for which a man is committed, be not within clergy; yet the person who voluntarily suffers him to escape, shall have the benefit of clergy. *1 H. H. 599.*

IX. Aiding in attempting to escape.

By the 16 G. 2. c. 31. If any person shall assist any prisoner to attempt his escape from any gaol, tho' no escape be actually made, if such prisoner was then attainted or convicted of treason or felony (except petty larceny), or lawfully committed to, or detained in any gaol, for treason or felony (except petty larceny) expressed in the warrant of commitment; he shall be guilty of felony, and be transported for 7 years: And if such prisoner was then convicted of, or detained in gaol for any crime not being treason or felony, or was then in gaol for debt amounting to 100*l.* he shall be guilty of a misdemeanor, and be liable to fine and imprisonment.

Aiding in attempting to escape.

And if any person shall convey, or cause to be conveyed, any disguise, instrument, or arms, to any prisoner in gaol, or to any other person for his use, without consent of the keeper; such person, altho' no escape or attempt be actually made, shall be deemed to have delivered such disguise, instrument, or arms, with an intent to assist such prisoner to escape or attempt to escape; and if such

such prisoner then was attainted or convicted of treason or felony (except petty larceny), or lawfully detained in gaol, for treason or felony (except petty larceny) expressed in the warrant of commitment; — he shall be guilty of felony, and be transported for 7 years: But if the prisoner was then convicted or detained for any crime not being treason or felony, or for debt amounting to 100 l. he shall be guilty of a misdemeanor, and liable to fine and imprisonment.

And if any person shall assist any prisoner to attempt to escape from any constable, or other person, who shall have the lawful charge of him, in order to carry him to gaol, by virtue of a warrant of commitment for treason or felony (except petty larceny); or if any person shall assist any felon to attempt his escape from any boat or vessel carrying felons for transportation, or from the contractor for the transportation of such felons, or his agents, he shall be guilty of felony, and be transported for 7 years.

All prosecutions on this act to be commenced within a year after the offence committed.

A. Indictment against a constable for an escape.

Westmorland, **T**HE jurors for our lord the king upon their oath present, That on the ——— day of ——— in the ——— year of the reign of ——— at ——— in the county aforesaid, one A. I. of ——— came before J. P. esquire, then and yet one of the justices of our said lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; and the said A. I. did, then and there, on his oath, before the same justice, charge, accuse, and give information against one A. O. of ——— aforesaid in the county aforesaid, yeoman, for a certain misdemeanor, in taking fish out of the pond of ——— at ——— in the said county [or, as the offence shall be:] Whereupon be the said J. P. the justice aforesaid, did then and there, to wit, at ——— aforesaid, in the county aforesaid, make a certain warrant, under his hand and seal, in due form of law, directed to the constable of ——— aforesaid, in the county aforesaid, thereby requiring him the said constable to take the body of the said A. O. and bring him before the said J. P. the justice aforesaid, to answer to such matters and things as should be alledged against him, touching the said misdemeanor; Which said warrant, afterwards, to wit, on the same day and year abovementioned, at ——— aforesaid, in the county aforesaid, was delivered to one A. C. then being constable of ——— aforesaid, in due form of law, to be executed; by virtue of which said warrant the said A. C. afterwards, to wit, on the said ——— day of ——— in the year aforesaid, at ——— aforesaid, in the said county, did take and arrest the body of the said A. O. and him the said A. O. in his custody for the cause aforesaid, had: Nevertheless, the said A. C. of ——— aforesaid, in the county aforesaid, yeoman, afterward, to wit, on the said ——— day of ——— in the year aforesaid, the duty of his office in that part not regarding, at ——— aforesaid, in the county aforesaid, unlawfully

unlawfully and negligently did permit the said A. O. to escape, and go at large, out of the custody of him the said A. C. to the great hindrance of justice, in contempt of our said lord the king, and his laws, and against the peace of our said lord the king, his crown and dignity.

Escheat. See Forfeiture.

Estreat.

1. **ESTREAT** (*Extractum*) is used for the true copy or note of some original writing or record, and especially of fines and amerciaments, imposed in the rolls of a court, to be levied by the bailiff or other officer. *F. N. B.* 57, 76. Estreat, what.

2. The justices and judges before whom fines or amerciaments shall be, shall charge the clerks of the estreats, by their oath to be made, that they make the rolls of such estreats distinctly by express words, of the cause of the loss, of the term of the year, and the nature of the writ, and betwixt what parties such issues or amerciaments shall be lost, as well in the king's suit, as in the suit of the party. *7 H. 4. c. 3.* Making out the estreats.

3. All clerks of the peace, and town clerks, shall deliver to the sheriff within 20 days after *Sep. 29.* yearly, a perfect estreat or schedule of all fines, issues, amerciaments, and other forfeitures whatsoever, forfeited in any sessions before *Michaelmas*; on pain of 50*l.* half to the king, and half to him that shall sue. *22 & 23 C. 2. c. 22. f. 7, 8.* Delivering the same to the sheriff.

4. And shall also yearly, on or before the second *Monday* after the morrow of *All Souls*, deliver into the court of exchequer, a duplicate, certificate, and estreat of such estreats and schedules, so delivered to the sheriff; on the like pain of 50*l.* *Id. f. 8.* And likewise they may be further amerced by the barons of the exchequer. *3 G. c. 15. f. 12.* And into the court of exchequer.

And upon delivery thereof, they shall take the following oath, to be administered by one of the barons:

" You shall swear, that these estreats now by you delivered, are truly and carefully made up and examined, and that all fines, issues, amerciaments, recognizances, and forfeitures which were set, lost, imposed, or forfeited, and in right and due course of law ought to be estreated in the court of exchequer, are, to the best of your knowledge and understanding, therein contained; and that in the same estreats are also contained and expressed all such fines as have been paid into the court, from which the said estreats are made, without any wilful or fraudulent discharge, omission, *misnomer*, or defect whatsoever: So help you God." *4 & 5 W. c. 24. f. 5.*

5. And if he shall withhold, or miscertify the same, he shall forfeit treble; half to the king, and half to him that shall sue; and Penalty of making default.

Process for levying.

Sheriff's duty in levying.

Estreats in the torn.

and shall also lose his office, and be incapable to hold any office in the revenue. 22 & 23 C. 2. c. 22. f. 9.

6. Where any fine or forfeiture shall be paid to the sheriff, clerk of the peace or other officer, and so certified into the exchequer; process shall be awarded to the sheriff against such person for levying the same. 22 & 23 C. 2. c. 22. f. 10.

7. And in levying, the sheriff shall shew the estreats under the seal of the exchequer, to the party indebted; on pain of treble damages to the party, and fine to the king, on conviction before the justices of the peace, or other justices. 42 Ed. 3. c. 9.

8. And the sheriff shall make no estreats to levy his own amerciaments (that is to say, in the torn), till two justices (1 2.) to be named at Michaelmas sessions by the *custos rotulorum*, or in his absence by the eldest in the commission, have inspected his books; and the said estreats shall be indented betwixt the said justices and sheriff, and sealed with their seals, the one part to remain with the justices, and the other with the sheriff: And the persons who shall gather the said amerciaments, shall be sworn by the said justices, that they shall take no more than is forfeited, and contained in the said estreats. 11 H. 7. c. 15.

Form of the estreat.

Westmorland. **A**N extract of all the issues, fines, amerciaments, and recognizances, set, lost, imposed, and forfeited to our sovereign lord the king, at the general quarter sessions of the peace of our said lord the king, holden at _____ in and for the said county of _____ on _____ the _____ day of _____ in the _____ year of the reign of _____ before _____ esquires, justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies trespasses, and other misdemeanors in the said county committed, John Robinson, gentleman, clerk of the peace for the county aforesaid, then and there attending:

Of A. O. late of _____ in the said county, labourer, for a trespass and assault at _____ aforesaid in the said county, whereof he is indicted and convicted; and his fine set at five shillings, which he paid to the sheriff in 1. s. d. court _____ 0 5 0

Of A. O. of _____ in the said county, yeoman, because he came not now here to answer to such things as against him, on the part of our said lord the king, should be objected, as by a certain recognizance taken before J. P. esquire, one of the justices of our said lord the king, assigned to keep the peace in the said county, he undertook 10 0 0

Of A. S. of _____ in the said county, yeoman, one of the pledges of the said A. O. because he had him not to answer as above _____ 5 0 0

Of B. S. of _____ in the said county, yeoman, the other of the pledges of the said A. O. for the like _____ 5 0 0

Evidence.

Evidence.

I. Of evidence in general.

II. Of written evidence.

III. Of the evidence of witnesses.

IV. Of process to cause witnesses to appear.

V. Of the manner of giving evidence.

I. Of evidence in general.

1. **E**VIDENCE in legal understanding, doth not only contain matters of record, as letters patents, fines, recoveries, inrollments, and the like, and writings under seal, as charters and deeds, and other writings without seal, as court rolls, accounts, and the like; but in a larger sense it containeth also the testimony of witnesses, and other proofs to be produced and given, for the finding of any issue joined between the parties. And it is called *evidence*, because thereby the point in issue is to be made evident to the jury. *1 Inst.* 283. Evidence, what,

2. It is a general rule in all cases, civil and criminal, that the best evidence that may be had, or that the nature of the thing will bear, is to be given: and it is upon this reason, that a copy of a record is admitted, because one cannot have the record it self; but a copy of a copy will not do. *Law of Evid.* 286. The best evidence is required.

3. Many times juries, together with other matter, are much induced by presumptions; whereof there are three sorts, violent, probable, and light or temerary. Violent presumption many times amounts to full proof; as if one be run thro' the body with a sword in a house, whereof he instantly dieth, and a man is seen to come out of that house, with a bloody sword, and no other man was at that time in the house. Probable presumption moveth little. But light, or temerary presumption moveth not at all. *1 Inst.* 6. Presumptive evidence.

If all the witnesses to a deed be dead (as no man can keep his witnesses alive, and time weareth out all men) then violent presumption, which stands for a proof, is continual and quiet possession; altho' the deed may receive credit from a comparing of seals, writing, and the like. *1 Inst.* 6.

4. The common law did not require any certain number of witnesses, for the trial of any crime whatsoever. *2 Harw.* 428. What number of witnesses are required.

And before a justice of the peace in divers cases, one witness is sufficient to convict an offender; the same being directed by special statutes.

But in case of high treason, whereby corruption of blood shall be made, no person shall be attainted, but upon the oaths of two witnesses, either both to the same overt act, or one of them to one, and the other of them to another overt act of the same treason. *7 W. c. 3. s. 2.*

And

And by 29 C. 2. c. 3. s. 5. Devises of lands shall be attested by three witnesses at the least.

II. Of written evidence.

Act of parliament.

1. A *private* act of parliament, that concerned *Rocheſter* bridge, tho' printed by *Raſſal*, was not allowed in evidence, not being examined by the record. Otherwise of *general* statutes; there the printed book is good evidence. *Tr. per pais* 348.

And there are very many of the old statutes, which are admitted and obtain as such, tho' there be no record at this day extant thereof, nor yet any other written evidence of the same, but what is in a manner only traditional, as namely, ancient copies, transcripts, books, pleadings, and the common received opinion and reputation, and the approbation of the judges learned in the laws. For the judges and courts of justice are *ex officio* bound to take notice of publick acts of parliament, and whether they are truly pleaded or not, and therefore they are the triers of them. But it is otherwise of private acts of parliament, for they may be put in issue, and tried by the record upon *nul tiel* record pleaded. *Hale's Hist. Com. L. 15, 16.*

Record.

2. Records prove themselves, and cannot be proved by witnesses. But copies of them must be proved by witnesses, and then they are good evidence. No rasure or interlining shall be intended in them. But the surest way is, to exemplify a record under the great seal, or at least under the seal of the court. *10 Co. 92.*

And nothing shall be admitted as evidence of what was done at another trial, till the record of that trial be produced. *Read. Evid.*

Record of sessions.

3. A record of the sessions was allowed in evidence, to prove that a person had not taken the oaths. *1 Salk. 284.*

Private book of entries.

4. But a private book of entries shall not be allowed for that purpose: Thus in the case of *The Queen* and *Mead*, the defendant, and eight others, were incorporated under an act made 39 *El.* by the name of the surveyors of the highways at *Ailesbury* in the county of *Bucks*, and were trustees of a charity called *Bedford's gift*. An information was preferred against the defendant, for executing this office, being an office of trust, without having taken the oaths, contrary to the 25 C. 2. c. 2. To which he pleaded Not guilty. And now it was moved for a rule, that the prosecutor might have two books produced, which these surveyors kept, in which they entred their elections, and also their receipts and disbursements; and that he might take copies of what he thought necessary, and that the books might be produced at the next assizes at the trial. But it was denied by the court; because they are perfectly of a private nature, and it would be to make a man produce evidence against himself in a criminal prosecution. *L. Raym. 927.*

Shop book.

5. By the 7 J. c. 12. No tradesman or handicraftsman shall be allowed to give his shop book in evidence, on an action for money due for wares delivered, or for work done, above one year

year before the action brought. But this not to extend to any trading between merchant and merchant, merchant and tradesman, or between tradesman and tradesman, for any thing directly falling within the compass of their mutual trades and merchandize.

In the case of *Pitman and Maddox*, 11 W. A shop book was allowed for evidence, it being proved that the servant that writ the book was dead, and this was his hand, and he accustomed to make the entries, and no proof was required of the delivery of the goods; and *Holt C. J.* said, it was as good evidence, as the proof of a witness's hand to an obligation: and he held, that tho' the statute of the 7 J. says, a shop book shall not be evidence after the year, yet it is not of it self evidence within the year. 2 Salk. 690.

6. A man's book of accounts is no evidence for the owner of the book, but for the adverse party; for his book cannot be of better credit than his oath, which would not serve in his own case. *Tr. per pais* 348. Book of accounts.

7. Every ancient deed proves it self, where possession has gone accordingly. But later deeds must be proved by witnesses. If the witnesses are dead, their handwriting must be proved. A deed cannot be proved by a copy; yet in cases of extremity, as where the deed was burnt, or lost by some such accident, the judges may at their discretion allow it to be proved by witnesses. *Wood* 1025. Deed.

And it was holden for law, by *Vernon* judge of assize, that where the defendant himself hath the deed which concerns the land in question, and will not produce it; in such a case, the copy thereof will be permitted to be given in evidence; and so it was, and the witness swore it once in his hand, and that the copy produced was a true copy of the deed, and himself did examine it. *Clayt.* 15.

And the counterpart of an ancient deed which is lost, may be good evidence with other circumstances: but not of it self, without other circumstances. 6 Mod. 225.

8. An indenture to guide the uses of a common recovery, was offered in evidence, but the seals were torn off; yet it being proved to have been done by a little boy, it was allowed to be read. *Palm.* 402. Indenture with the seals torn off.

9. The probate of a will, under which a title to land is made, is not evidence; but the will it self must be produced. 1 Keb. 117. Will.

10. If upon collateral issue it is to be proved, that such a one was justice of the peace, baronet, or the like; common reputation is sufficient proof, without shewing the commission, or letters patent of the creation. *Tr. per pais* 347. Letters patents.

11. *M. 11 G. Serle* and Lord *Barrington*. The indorsement on a bond by the obligee, of payment of interest, was allowed to be given in evidence by his administrator, to take off the presumption from the length of time. *L. Raym.* 1371. Indorsement of interest on a bond.

12. It seems settled, that the examination of an informer taken upon oath, and subscribed by him, either before a coroner upon Information before a justice of peace.

upon an inquisition of death, or before justices of the peace, in pursuance of the statutes of *Pb. & M.* upon a bailment or commitment for any felony, may be given in evidence at the trial, if it be made out by oath to the satisfaction of the court, that such informer is dead, or unable to travel, or kept away by the means or procurement of the prisoner, and that the examination offered in evidence is the very same that was sworn before the coroner or justice, without any alteration whatsoever. 2 *Haw.* 429.

But it hath been adjudged, that it is not sufficient to authorize the reading of such examination, to make oath that the prosecutors have used all their endeavours to find the witness, but cannot find him. 2 *Haw.* 430.

But it is said to have been adjudged, by the court of king's bench, in the 7 *W.* (1 *Salk.* 281.) upon advice with the justices of the common pleas, on an indictment for a *libel*, that depositions taken before a justice of the peace, relating to the fact, could not be given in evidence, tho' the deponent were dead; and that the reason why such depositions may be given in evidence in *felony*, depends upon the statutes of *P. & M.* and that this cannot be extended farther than the particular case of felony. But in the report of this case, 5 *Mod.* 165. it is said, that the reason why such depositions could not be read, was because the defendant was not present when they were taken, and therefore had not the benefit of a cross examination. 2 *Haw.* 430.

Depositions in
perpetuam rei
memoriam.

Inscription on a
grave stone.

Almanack.

13. Depositions in *perpetuam rei memoriam*, are not evidence, so long as the witnesses live. 1 *Salk.* 286.

14. A copy of an inscription on a grave stone, has been allowed to be given in evidence. 2 *Roll's Abr.* 686, 7.

15. The examination of an almanack, that such a day of the month was *Sunday*, was ruled to be sufficient; and that a trial of this by a jury is not necessary, altho' it is a matter of fact. *Cro. El.* 227.

Father's entry of
the child's birth.

16. And an almanack wherein the father had writ the day of the nativity of his son, was allowed as evidence to prove the non-age of the son. *Raym.* 84.

Nomenclator of
Westminster
school.

17. The nomenclator of *Westminster* school was produced to prove, that the *Latin* word *capital* (used to signify a *coif*) is a noun substantive; and the court allowed that authority before *Rider's* dictionary. *E.* 16 C. 2. *Tr. per pais* 25.

Camden's
Britannia.

18. *Camden's Britannia* was offered in evidence, to prove a particular custom, but refused; for the court held, that a general history might be given in evidence to prove a matter relating to the kingdom in general, because the nature of the thing requires it; but not to prove a particular right or custom: So in the case of *St. Katharine's* hospital, *Hale* Ch. J. allowed a chronicle to be evidence of a particular point of history in *Edward* the third's time: So a year book may be evidence, to prove the course of the court. And in this case it was admitted, that heralds books are good evidence as to pedigrees, and parish registers as to births and marriages, upon the nature of the thing. But in the exchequer, the question being whether the *Abbey de Sentibus* was an inferior abbey or not, *Dugdale's Monasticon* was refused for evidence,

evidence, because the original records might be had in the augmentation office. 1 Salk. 281. 7 W. Stainer and The burgeses of Droitwich.

19. It seems to have been generally holden, since the reversal of the attainder of *Algernon Sidney*, that similitude of hands is not evidence in any criminal case, whether capital or not capital. *2 Haw. 431. L. Raym. 39.* Similitude of hands.

20. Tho' one consent to have a letter read, yet the jury, on pain of attaint, are not bound to find it. 1 Keb. 249. Letter.

III. Of the evidence of witnesses.

1. It seems that the confession of the defendant, whether taken on an examination before justices of the peace, in pursuance of the 1 & 2 P. & M. c. 13. or 2 & 3 P. & M. c. 10. upon a bailment or commitment for felony; or taken by the common law upon an examination for other crimes not within those statutes, or in discourse with private persons, hath always been allowed to be given in evidence, against the party confessing, but not against others. 2 Haw. 429. Confession.

But wherever a man's confession is made use of against him, it must be all taken together, and not by parcels. 2 Haw. 429.

2. It is to be observed, that there be many circumstances that disable a juror, that are not sufficient exceptions against a witness: Thus the exception of kindred, is a good cause of challenge against a juror, but not against a witness; therefore the father may be a competent witness for or against his son, or the son for or against his father. These and the like exceptions may be to the credit or credibility of the witness, but are not exceptions against his competency. 2 H. H. 276. Witness of kin to the party.

For, that I may observe it once for all, the exceptions to a witness are of two kinds, 1. Exceptions to the credit of the witness, which do not at all disable him from being sworn, but yet may blemish the credibility of his testimony; and in such case the witness is to be allowed, but the credit of his testimony is left to the jury. 2. Exceptions to the competency of the witness, which do exclude him from giving his testimony, and of these exceptions the court is the judge. 2 H. H. 276, 277.

3. It seems agreed, that an attainder, judgment, or conviction of treason, felony, piracy, *præmunire*, perjury, or forgery on 5 El. and also a judgment in attaint for giving a false verdict, or in conspiracy at the suit of the king; and also judgment for any crime whatsoever to stand in the pillory, or to be whipped or branded, are good causes of exception against a witness, while they continue in force. 2 Haw. 432. Witness infamous.

But it is agreed, that no such conviction or judgment can be made use of to this purpose, unless the record be actually produced in court. 2 Haw. 433.

Also, it is a general rule, that a witness shall not be asked any question, the answering to which might oblige him to accuse himself of a crime; and that his credit is to be impeached only by general accounts of his character and reputation, and not by proofs

of particular crimes, whereof he never was convicted. 2 *Haw.* 433.

And a man shall not be permitted to swear, that he was suborned and perjured. *St. Tr. V.* 3. 427.

And Lord *Coke* says, a witness alledging his own infamy or turpitude, is not to be heard. 4 *Inst.* 279.

It seems clear at this day, that outlawry in a personal action is not a good exception against a witness, as it is against a juror. 2 *Haw.* 433.

A person convicted of felony, who is admitted to his clergy, and burnt in the hand, is thereby re-enabled to be a witness. 2 *Haw.* 433.

And it seems agreed, that the king's pardon of treason or felony, after a conviction or attainder restores the party to his credit. 2 *Haw.* 433.

Witness an infidel.

4. It seems agreed to be a good exception, that a witness is an infidel; that is, as it seemeth, that he believes neither the old nor new testament to be the word of God, on one of which our laws require the oath should be administered. 2 *Haw.* 434.

Witness wanting discretion.

5. Want of discretion is a good exception against a witness; on which account alone it seems, that an infant may be excepted against. 2 *Haw.* 434.

But if an infant be of the age of 14 years, he is as to this purpose of the age of discretion, to be sworn as a witness; but if under that age, yet if it appear, that he hath a competent discretion, he may be sworn. 2 *H. H.* 278.

And in many cases an infant of tender years may be examined without oath, where the exigence of the case requires it; which possibly, being fortified with concurrent evidences, may be of some weight; especially in cases of rape, buggery, and such crimes as are practised upon children. 2 *H. H.* 279, 284.

Witness interested.

6. It seems an uncontested rule in all cases, that it is a good exception against a witness, that he is either to be a gainer or loser by the event of the cause, whether such advantage be direct and immediate, or consequential only. 2 *Haw.* 433.

Thus in an information upon the statute of usury, the party to the usurious contract shall not be admitted to be a witness against the usurer, for in effect he should be witness in his own cause, and should avoid his own bonds and assurances, and discharge himself of the money borrowed. 1 *Inst.* 6.

Thus also an attorney ought not to be examined against his client, because he is obliged to keep his secrets: but of his own knowledge before retainer, he may be examined as a witness, if served with a *subpœna*. *Wood* 1028.

But upon an indictment for battery, or the like, the party grieved may be a witness against the defendant, because the prosecution is at the suit of the king. *Wood* 1096.

Also it seems agreed, that it is no good exception against a witness, that he has a maintenance from the king; for every one may maintain his own witnesses. 2 *Haw.* 434.

Thus also, one commoner may be a witness for another claiming common, because in effect it charges himself; that is to say, he

he admits another to have common with himself. But if the prescription be, that all the inhabitants of such a place ought to have common there, one of the inhabitants cannot be a witness, to prove that another of the said inhabitants ought to have common there, because in effect he would swear to give himself right of common there. *L. Raym. 731.*

In evidence to a jury at bar, a special issue by rule of court was directed to try the custom of lady *Percie's* manor of *Westwood* in *Cumberland*, whether fines on the tenants on their lord's death, be due to the heirs or successors of the lord, during his minority; the defendant excepted to the steward, because he had a fee on admission, but it was not allowed, and he was sworn.

3 *Keb. 90.*

A witness's laying a wager in the cause, is no hindrance to his being a witness; for the other has an interest in his evidence, which he cannot deprive him of. *Farest. 31.*

7. It seems agreed, that the husband and wife being as one and the same person in affection and interest, can no more give evidence for one another, in any case whatsoever, than for themselves; and that regularly the one shall not be admitted to give evidence *against* the other, nor the examination of the one be made use of against the other, by reason of the implacable dissension which might be caused by it, and the great danger of perjury from taking the oaths of persons under so great a bias, and the extreme hardship of the case. Yet some exceptions have been allowed in cases of evident necessity; as in the lord *Audley's* case, who held his wife, while his servant by his command ravished her; or where a man is indicted for a forcible marriage on the statute of the 3 *H. 7.* or where either a husband or wife have cause to demand sureties of the peace against the other. 2 *Haw. 431, 432.*

8. It seems agreed, that it is no exception against a person's giving evidence either for or against a prisoner, that he is one of the judges or jurors who are to try him. *2 Haw. 432.*

9. It has been long settled, that it is no exception against a witness, that he hath confessed himself guilty of the same crime, if he hath not been indicted for it; for if no accomplices were to be admitted as witnesses, it would be generally impossible to find evidence to convict the greatest offenders. 2 *Haw. 432.*

Also it hath been often ruled, that accomplices who are indicted, are good witnesses for the king, until they be convicted. 2 *Haw. 432.*

Also it hath been often adjudged, that such of the defendants in an information, against whom no evidence is given, may be witnesses for the others. 2 *Haw. 432.*

It hath been also adjudged, that where three persons are sued in three several actions on the statute for a supposed perjury in their evidence concerning the same thing, they may be good witnesses in such actions for one another. 2 *Haw. 432.*

10. It seems agreed, that it is no good exception against a witness, that he is an alien, or villein, or bondman. 2 *Haw. 434.*

Witness over sea,
or dead.

11. If a man be over sea, or dead, the party shall be admitted to prove his hand by witnesses, or comparing it with other writing. *Tr. per p.* 301.

But it hath been agreed, that the evidence given by a witness at one trial, cannot in the ordinary course of justice be made use of against a defendant, on the death of such witness at another trial. *2 Hawk.* 430.

Hearsay.

12. It seems agreed, that what a *stranger* has been heard to say, is in strictness no manner of evidence, either for or against a prisoner, not only because it is not upon oath, but also because the other side hath no opportunity of a cross examination; and therefore it seems a settled rule, that it shall never be made use of, but only by way of inducement or illustration of what is properly evidence: yet it seems, that what the *prisoner* has been heard to say at another time, may be given in evidence, either to invalidate or confirm the testimony which he gives in court. *2 Hawk.* 431.

IV. Of process to cause witnesses to appear.

Two ways of
causing witnesses
to appear.

1. The compulsory means to bring in witnesses, are of two kinds. 1. By process of *subpœna* (A) issued in the king's name, by the justices, or others, where the trial is to be. 2. Which is the more ordinary and more effectual means (in criminal cases), the justices that take the examination of the person accused, and the information of the witnesses, may at that time, or at any time after, and before the trial, bind over (B) the witnesses to appear at the sessions, and in case of their refusal either to come, or to be bound over, may commit them for their contempt in such refusal. *2 H. H.* 282.

Charges of wit-
nesses.

2. But that which is a great defect in this part of judicial administration, is, that there is no power to allow witnesses their charges in criminal cases; whereby many times poor persons grow weary of attendance, or bear their own charges therein, to their great hindrance and loss. *2 H. H.* 282.

That is to say, unless it be in the case of grand or petit larceny, or other felony; for in such cases, by the statute of the 25 G. 2. c. 36. reasonable charges shall be allowed by the court to the prosecutor upon conviction, to be paid by the treasurer out of the county rates.

And by the statute of the 27 G. 2. When any poor person shall appear on recognizance in any court to give evidence against another accused of grand or petit larceny or other felony, the court may, at the prayer, and on the oath of such person, and on consideration of his circumstances, order the treasurer to pay him, such sum as they shall think reasonable for his time, trouble, and expence; which order the proper officer shall make out for the fee of 6 d. except in *Middlesex*, where the same shall be paid by the overseers of the poor where the person was apprehended.

Where a witness
is a prisoner in
execution.

3. Where a witness is a prisoner in execution for debt, he must be brought up by *habeas corpus ad testificandum*, to give his evidence. *St. Tr. v.* 2. 580. *v.* 4. 37.

4. One

4. One was subpœnaed *ad testificandum*, and prayed a privilege from being arrested, which was granted; and by the court, it will supersede an arrest upon mean process, but not upon an execution; yet the sheriff in that case may be committed for his contempt. *Nevil's case*, 15 C. 2. *Tr. per p.* 310.

Witness how far privileged against an arrest.

5. By the 5 *El. c. 9. s. 12.* If any person, upon whom any process out of any of the courts of record within this realm shall be served, to testify or depose concerning any matter depending therein, and having tendred unto him, according to his countenance or calling, such reasonable sum for his costs and charges, as (having regard to the distance of the places) is necessary to be allowed in that behalf, do not appear according to the tenor of the process, having not a lawful and reasonable impediment; he shall forfeit 10*l.* and shall yield such further recompence to the party grieved, as to the judge of the court, out of which the process was awarded, shall seem meet, according to the loss that the party which procured the process shall sustain; to be recovered by the party grieved, in any court of record.

Penalty of a witness not appearing.

In the case of *Wyat and Winkford*, 2 G. 2. A motion was made for an attachment against a person, for not attending at the assizes to give his evidence, being subpœnaed, and having received one guinea for his charges, and being promised to have one guinea a day while there, and his charges paid. And a rule was made to shew cause. And afterwards cause was shewed, that an attachment ought not to go, but the party injured had his action upon the statute of *Eliz.* but the court thought, that it was a good foundation for an attachment, the disobedience to the *subpœna* being a contempt to the court; and tho' an action might be brought on the statute, yet that was a more dilatory method, and more difficult to proceed in, which encouraged witnesses not attending frequently upon trials, at which they were subpœnaed to appear and give evidence. And therefore the rule was made absolute. *L. Raym.* 1529.

In criminal cases, if a witness hath been bound over, and do not appear; he shall forfeit his recognizance.

V. Of the manner of giving evidence.

1. He who affirms the matter in issue, whether plaintiff or defendant, ought to begin to give evidence. *Litt.* 36. *Goldf.* 23.
2. The evidence both for and against a prisoner, ought to be upon oath.

Which party shall begin the evidence. Evidence to be upon oath.

And if a peer is produced as a witness, he ought to be sworn. *3 Keb.* 61.

Lord *Preston* was committed by the court of quarter sessions, for refusing to be sworn to give evidence to the grand jury, on an indictment of high treason; and on his being brought by *habeas corpus* into the king's bench, *Holt Ch. J.* said, it was a great contempt, and that had he been there, he would have fined him, and committed him till he paid the fine; but being otherwise, he was bailed. *1 Salk.* 278.

Witnesses may
be examined
apart.
Evidence to be
given in the pri-
soner's presence.
Witnesses cannot
testify a nega-
tive.
A man shall not
disprove his own
witnesses.
Whether a wit-
ness may read
his evidence.
When he may be
cross examined.

variance.

Which party
shall conclude.

But a quaker's affirmation in all cases not being criminal, shall be allowed as evidence, without an oath; but in criminal cases, his affirmation shall not be allowed. 7 & 8 W. c. 34.

3. The court may indulge a prisoner in examining the witnesses apart, but he cannot demand it of right. *St. Tr. V. 4, 9.*

4. In cases of life, no evidence is to be given against a prisoner, but in his presence. 2 *Harw.* 428.

5. Witnesses cannot testify a negative, but only an affirmative. *Wood* 1026.

6. A prisoner may not call witnesses to disprove what his own witnesses have sworn. *St. Tr. V. 2, 764, 792.*

7. A witness shall not be permitted to read his evidence, but he may look upon his notes to refresh his memory. *St. Tr. V. 4, 45.*

8. A witness shall not be cross examined, till he has gone thro' the evidence for the party on whose side he was produced. *St. Tr. V. 2, 792.*

9. It hath been admitted, that in order to shew a variance in the evidence, a deposition taken by a witness before a justice of the peace, may at the prisoner's desire be read at the trial, in order to take off the credit of the witness, by shewing a variance between such depositions, and the evidence given in court. And for the same reason it seems agreed, that where a witness at one trial varies from his own evidence at another, in relation to the same matter, such variance may also be given in evidence to invalidate his testimony at the second trial. 2 *Harw.* 430.

10. The counsel of that party which doth begin to maintain the issue, ought to conclude. *Tri. p. pais* 220.

A. Subpoena to give evidence.

GEORGE the second, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and so forth. To A. B. C. D. and E. F. greeting: We command you, and every of you, that all business being laid aside, and all excuses whatsoever ceasing, you do in your proper persons appear before our justices assigned to keep the peace in our county of ——— and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at the general quarter sessions of the peace, to be holden at ——— in and for the said county, on ——— the ——— day of ——— at the hour of ten in the forenoon of the same day, to testify the truth, and give evidence on behalf of the inhabitants of the parish of ——— in the said county, against A. O. in a case of bastardy. And this you are in no wise to omit, nor any of you to omit, on pain of one hundred pounds. Witness Sir James Lowther, baronet, the ——— day of ——— in the ——— year of our reign. C.

Note; There may be four witnesses put in one subpoena.

A Subpœna ticket.

To Mr. A. W.

BY virtue of his majesty's writ of subpœna to you directed, and herewith shewn to you, you are personally to be before his majesty's justices of the peace for the county of — at the general quarter sessions of the peace to be holden for the said county, at — in the said county, on — the — day of — next, to testify the truth, and give evidence on behalf of the inhabitants of the parish of — in the said county, against A. O. in a case of bastardy. And this you are not to omit, upon pain of one hundred pounds. Dated this — day of — 1753.

By the court,

C.

B. Condition of a recognizance to appear and give evidence.

THE condition of this recognizance is such, that if the abovebound A. W. shall personally appear at the next general quarter sessions of the peace to be holden at — in and for the said county, and then and there give such evidence as he knoweth, upon a bill of indictment to be exhibited by A. J. of — yeoman, to the grand jury, against A. O. late of — in the said county, yeoman, for the feloniously taking and carrying away — the property of — and in case the said bill be found a true bill, then if the said A. W. shall then and there give evidence to the jurors that shall pass on the trial of the said A. O. upon the said bill of indictment, and not depart thence without leave of the court, then this recognizance to be void, otherwise of force.

Examination.

IF a felony is committed, and one is brought before a justice upon suspicion thereof, and the justice finds upon examination that the prisoner is not guilty; yet the justice shall not discharge him, but he must either be bailed or committed: for it is not fit that a man once arrested and charged with felony, or suspicion thereof, should be delivered upon any man's discretion, without farther trial. *Dalt. c. 164.*

In order to which bail or commitment, the examination and information of the parties must first be taken, according to the following statutes:

Two or more justices (1 Q.) or one of the said justices, before they bail a person apprehended for felony (if the offence is bailable) shall take his examination (A) and the information (B) of them that bring him, of the fact and circumstances thereof, and the same,

Examination.

or as much thereof as shall be material to prove the felony, shall put in writing; which examination they shall certify (together with the bailment) at the next general gaol delivery, to be holden within the limits of their commission. 1 & 2 P. & M. c. 13. f. 4.

And they shall have power to bind by recognizance (C) all such as do declare any thing material to prove the offence, to appear at the next general gaol delivery, to be holden within the county where the trial shall be, then and there to give evidence against the party; and shall certify such recognizance in like manner. S. 5.

And if they offend in any thing herein, they shall be fined by the justices of gaol delivery. Id.

In like manner, where the person is not bailed, but committed to ward, the justice or justices who commit him, shall before such commitment, take the like examination and information, and shall put the same in writing within two days after the said examination, and shall in like manner bind over the witnesses; and certify the whole as above. 2 & 3 P. & M. c. 10.

Shall take his examination] And in order thereunto, if by some reasonable occasion, the justice cannot at the return of the warrant take the examination, he may by word of mouth command the constable or any other person, to detain in custody the prisoner till the next day, and then to bring him before the justice, for farther examination. And this detainer is justifiable by the constable or any other person, without shewing the particular cause for which he was to be examined, or any warrant in writing. 1 H. H. 585.

But the time of the detainer must be no longer than is necessary for such purpose; for which it is said, that the space of three days is a reasonable time. 2 Haw. 119.

But the examination of the person accused, ought not to be upon oath. 1 H. H. 585.

But if upon his examination he shall confess the matter, it shall not be amiss that he subscribe his name, or mark to it. Dalt. c. 164.

Which examination being voluntary, and sworn by the justice or his clerk to be truly taken, may be given in evidence against the party confessing, but not against others. 1 H. H. 585. 2 Haw. 429.

Information of them that bring him] Or of other witnesses; whom the justice may bring before him by his warrant (D) for that purpose. 1 H. H. 586. Dalt. c. 164.

And this information must be upon oath. Dalt. c. 164. 1 H. H. 586.

And therefore if a quaker is a witness, his affirmation must not be taken in this case; for by the 7 & 8 W. c. 34. s. 36. it is provided, that no quaker shall be examined for or against any person in any criminal cause, unless it be upon oath.

And the said information being upon the trial sworn to be truly taken, by the justice or his clerk, may be given in evidence against the prisoner, if the witnesses be dead and not able to travel. 1 H. H. 586.

Or

Or as much thereof as shall be material to prove the felony] Yet it seemeth also just and right, that the justices who take information against a felon, or person suspected of felony, should take and certify as well such information, proof, and evidence, as goeth to the acquittal or clearing of the prisoner, as such as maketh against the prisoner: for such information, evidence, or proof so taken, is only to inform the king and his justices of the truth of the matter. *Dalt. c. 165.*

Shall certify at the next gaol delivery] And yet for petty larcenies, and small felonies, the offenders may be tried at the quarter sessions, and the examinations and informations may be certified thither. *Dalt. c. 164.*

To be holden within the limits of their commission] And yet examinations taken by justices of the peace in one county, may be by them certified in another county, and there read, and given in evidence against the prisoner. *Dalt. c. 164.*

To bind by recognizance] And upon refusal, may commit the person refusing. *1 H. H. 586.*

And the parties grieved ought to be bound, not only to give evidence, but also to prefer a bill of indictment against the prisoner. *Dalt. c. 164.*

A. Examination of a felon.

Westmorland. **T**HE examination of A. O. of — yeoman, taken before me Lancelot Pattenfon, clerk, one of his majesty's justices of the peace for the said county [or, in the case of bail, — taken before us — two of his majesty's justices of the peace for the said county, and one of us of the Quorum] the — day of — in the — year of the reign of —.

The said A. O. being charged before me [or, us] by A. I. of — yeoman, with the felonious stealing out of the house of the said A. I. at — on the — day of — the following goods, to wit, — to the value of — he the said A. O. upon his examination now taken before me [or, us] confesseth that — [or denieth that —] &c.

B. Information of a witness.

Westmorland. **T**HE information of A. I. of — yeoman, taken upon oath before me [as before].

C. Recognizance to give evidence.

Westmorland. **B**E it remembred, that on the — day of — in the — year of the reign of — A. I. of — in the said county, yeoman, did come before me Lancelot Pattenfon, clerk, one of the justices of our said lord the king, assigned to keep the peace in the said county, and did acknowledge himself to owe to our said lord the king ten pounds of lawful money

Examination.

ney of Great Britain, under condition, that if he shall personally appear before the justices of our said lord the king, at the next general quarter sessions of the peace [or, gaol delivery] to be holden in and for the said county, then and there to give evidence in behalf of our said lord the king, against A. O. late of ——— who being attached, and suspected of felony, is now committed to the gaol of our said lord the king in the said county, that then this recognizance to be void, otherwile of force.

Or thus, to prefer a bill of indictment, and give evidence.

Westmorland. **B**E it remembred, that on the ——— day of ——— in the ——— year of the reign of ——— A. I. of ——— in the said county, yeoman, personally came before me Lancelot Pattenson, clerk, one of the justices of our said lord the king, assigned to keep the peace in the said county, and acknowledged himself to owe to our said lord the king the sum of ——— of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands, and tenements, to the use of our said lord the king, his heirs, and successors, if he the said A. I. shall fail in the condition indorsed.

J. P.

The condition of the within written recognizance is such, that whereas one A. O. late of ——— was this present day brought before the justice withinmentioned by the within bounden A. I. and was by him charged with the felonious taking and carrying away ——— of the goods of him the said A. I. and thereupon was committed by the said justice to the common gaol in and for the said county: If therefore he the said A. I. shall and do at the next general quarter sessions of the peace [or, gaol delivery] to be holden in and for the said county, prefer, or cause to be preferred, one bill of indictment of the said felony against the said A. O. and shall then also give evidence there concerning the same, as well to the jurors that shall then inquire of the said felony, as also to them that shall pass upon the trial of the said A. O. that then the said recognizance to be void, or else to stand in full force for the king.

D. Warrant for a witness.

Westmorland. } To the constable of ———

WHEREAS oath hath been made before me ——— one of his majesty's justices of the peace in and for the said county, by A. I. of ——— yeoman, that he the said A. I. was lately robbed at ——— and that he hath good cause to believe that A. W. of ——— is a material witness to prove by whom the said robbery was committed: These are therefore to require you to cause the said A. I. forthwith to come before me, to give such information and evidence as he knoweth concerning the said offence, that such further

Further proceeding may be had therein, as to the law doth appertain. Given under my hand and seal at ——— in the said county, the ——— day of ———.

Excise and Customs.

AS the customs and excise, so far as justices of the peace, constables, and other peace officers, are concerned therein, are in some measure connected and interwoven with each other; it is thought proper here to represent them together, that the reader may at once have a full and distinct comprehension of the whole.

- I. Of the customs in general.
- II. Of the excise in general.
- III. Of the several goods in particular, under the management of the commissioners of the customs and excise.

I. Of the customs in general.

Note; There are two books of rates for ascertaining the values of goods on importation, according to which the customs shall be paid; the one, signed by Sir Harbottle Grimston, baronet, speaker of the house of commons, referred to, established, and confirmed, by the act of tonnage and poundage 12 C. 2. c. 4. The other, signed by Spencer Compton, esquire, speaker of the house of commons, being an additional book of rates of goods imported, not particularly specified in the former book of rates: The latter of which, as being part of the act it self, is inserted in the statutes at large, 11 G. c. 7. but the former, altho' it is as necessary to be known, yet being no part of the act, is not inserted therein; but may be found in Cay's abridgment.

1. When any commission shall be issued for constituting commissioners of the customs, two of them first named in the commission shall be sworn before the chancellor, or chief baron of the exchequer, or master of the rolls, *for the true and faithful execution, to the best of their knowledge and power, of the trust committed to their charge and inspection, and that they will not take or receive any reward or gratuity, directly or indirectly, other than their salaries, and what shall be allowed them from the crown, or the regular fees established by law, for any service to be done, in the execution of their employment in the customs, on any account whatsoever.* 6 W. c. 1. s. 5.

Appointing and swearing commissioners.

And

Excise and Customs.

And every other of the commissioners and patent officers, and every of their deputies, clerks, or servants, and all other officers who shall have any employment in or about the customs, shall at their admission, if it is within the ports of *London*, take the said oath before two commissioners; and elsewhere, before two justices of the peace in the county, town, or place, where his employment shall be: And every person not taking such oath, shall forfeit his office. *Id.*

And the persons hereby respectively authorized to administer the oath, shall certify the taking thereof, to the next sessions to be held for the county or place where the oath was administered, to be kept amongst the records. *Id.* f. 6.

In what cases
they only can
make seizures.

2. By the 13 & 14 C. 2. c. 11. No ship or goods shall be seized as forfeited for unlawful importation or exportation, or non-payment of customs, but by officers of the customs. S. 15.

But by the 8 G. c. 18. Spirituous liquors, *British* or foreign, and all foreign excisable liquors forfeited, together with the casks or other package, may be seized by any officer of the customs or excise, or by such persons as shall be deputed by warrant from the lord treasurer, or under treasurer, or by special commission under the great or privy seal; but by no other person. S. 24.

And therefore no others have power, unless where it is specially given, as it is in some cases hereafter following, by statute.

Isle of man, as
to customs.

3. No drawback shall be allowed for goods exported to the *Isle of Man*; and none shall be imported from thence, but of the produce thereof. 12 G. c. 28. f. 21, 22, 23.

Shipping or land-
ing goods with-
out warrant.

4. If any goods shall be laden or taken in from the shoar, into any barge, hoy, wherry, or boat, to be carried aboard any ship outward bound; or laden or taken in out of any ship coming in from foreign parts, without a warrant and presence of an officer of the customs; such barge, hoy, wherry, or boat shall be forfeited; and the wharfinger offending shall forfeit 100 l. and the master, purser, boatswain, or other mariner of any ship inward bound, consenting thereunto, shall forfeit the value of the goods so unshipped; half to the king, and half to him that shall sue. 13 & 14 C. 2. c. 11. f. 7.

And if any carman, porter, waterman, or other person, shall assist in the taking up, landing, shipping off, or carrying away, any such goods; such person, being apprehended by the warrant of any justice of the peace, and the same being proved by the oath of two witnesses, the said offender for the first offence shall by the justice be committed to the next gaol, there to remain till he find surety of the good behaviour for so long time until he be discharged by the lord treasurer, chancellor, under treasurer, or barons of the exchequer; and for a second offence, he may by any justice of the peace as aforesaid, be committed to the next gaol, there to remain for two months without bail, or until he shall pay to the sheriff 5 l. for the king's use, or until he shall be discharged by the court of exchequer as aforesaid. *Id.*

Power of justices
in case of ships,
cattle, and car-
riages forfeited.

5. And here, on occasion of the forfeiture of the boat or vessel, mentioned in the preceding section, it is proper to take notice of a general clause in the statute of 8 G. c. 18. which brings
the

the cognizance not only of the said forfeiture, but also of several others hereafter following, under the jurisdiction of the justices of the peace, and consequently enlarges considerably this title relating to the customs; to wit, In regard that the keeping and maintaining the horses seized, from the time of seizure, to the time of condemnation in the court of exchequer, is very chargeable, and the charge of condemning such vessels, boats, and horses, is very great; therefore it is enacted, that all seizures of vessels or boats of 15 tons or under, by virtue of any act relating to the customs, for carrying uncustomed or prohibited goods, or for relanding debenture goods; and all seizures of horses, or other cattle, or carriages for carrying such goods, may be heard and determined in such manner as is appointed by the act of 6 G. c. 21. except as therein excepted; that is to say, All such seizures may in a summary way be determined by two justices of the peace residing near the place where the seizure is made; who shall summon the party accused, and on appearance or default proceed to hear and give judgment, and issue warrants for sale of such as shall be by them condemned: whose judgment shall not be liable to any appeal or *certiorari*. 8 G. c. 18. f. 16.

6. And by the 9 G. 2. c. 35. In trials of seizures, the justices shall proceed to the merits of the cause, without inquiring into the form or manner of seizure. S. 34. Justices on trial to proceed on the merits.

7. And if any question shall arise, whether any person be an officer of the customs, proof shall be admitted, that such person was reputed to be, and had acted in such office, and at the time when the matter in controversy was done, without proving or producing the commission. 11 G. c. 30. f. 32. Officer on trial need not prove his commission.

8. And if any dispute shall arise, whether the customs have been paid; the proof shall lie on the owner, and not on the officer. 12 G. c. 28. f. 8. Proof to lie on the owner.

9. If any foreign goods specified in any certificate, whereupon any drawback is to be made, or debenture to be made forth for any such drawback, shall not be really and *bona fide* shipped and exported (danger of the seas and enemies excepted), or shall be landed again, unless in case of distress to save the goods from perishing, which shall presently be made known to the principal officers of the port; then not only all such certificate goods shall be forfeited, but also the person relanding the same, or concerned therein, or to whose hands they shall knowingly come, or by whose privity they are relanded, shall forfeit double value of the drawback, together with the vessels, boats, horses, cattle, and carriages, made use of in landing or carrying the same; half to the king, and half to him that shall inform, seize, or sue in the courts, at *Westminster*. 8 An. c. 13. f. 16. But by the clause above-mentioned, the boats, cattle, and carriages, may be recovered before the justices of the peace. Goods relanded after drawback.

10. By the 8 An. c. 7. If any goods shall be unshipped, with intention to be landed, without paying customs, or if any prohibited goods shall be imported; then not only the said goods shall be forfeited, but also the persons assisting or concerned therein, or to whose hands they shall come, shall forfeit treble value, together Unshipping with intent to land.

ther with the vessels, boats, horses, and other cattle, and carriages; half to the king, and half to him that shall seize or sue. S. 17.

Power to search.

11. Any person authorized by writ of assistants out of the exchequer, may take a constable or other publick officer near, and in the day time enter any house or place, and in case of resistance break open doors, chests, and other package, there to seize, and from thence to bring goods prohibited and uncustomed, and secure them in the king's warehouse. 13 & 14 C. 2. c. 11. s. 5.

Goods passing
may be stopped
and seized.

12. If prohibited or customable goods shall be found by any officer of the customs, in a bark, hoy, lighter, barge, boat, or wherry on the water; or coming directly from the water side, without the presence of an officer; or if such goods shall, on information of a credible person, be found in any house or place, on search made as by the said statute of 13 & 14 C. 2. c. 11. such officer may stop and put the said goods in the king's warehouse, until the claimer shall make proof before the commissioners, if it be in the port of *London*, that the duties have been paid or secured, or that the same had been bought in a lawful way of trade, and that such person verily believes the duties to have been paid, or that the said goods had been compounded for, or condemned in the exchequer, or been otherwise delivered by writ of that court, and that the prohibited goods had been compounded for, or condemned, or otherwise delivered, as aforesaid; in which case, the goods shall be delivered without delay or charge. And if the goods be stopped in any other port, the claimer shall make the like proof and deliver the same to the collector, or in his absence to one of the other principal officers of the port, which proof shall forthwith be transmitted to the commissioners for their directions touching the delivery of the goods, or for seizing the same and prosecution. 6 G. c. 21. s. 39.

Provided such proof be made within ten days; in failure whereof the goods may be seized and prosecuted as by the laws against the importation of prohibited or uncustomed goods. S. 40.

If on such prosecution, where no application hath been made to the commissioners or officers aforesaid, and not otherwise, the property of the goods shall be claimed, and the question shall arise whether the duties were paid, or the goods had been compounded for, or condemned, or otherwise delivered by writ out of the exchequer, or bought in a lawful way of trade, the proof shall lie on the claimer; and if the claimer recovers his goods, he shall have costs likewise, which shall be reckoned as a full satisfaction for damages. S. 41.

Where the claimer shall make proof, either by oath before a justice of the peace, or otherwise, to the satisfaction of the commissioners or officers of the customs, so as to induce them to order a delivery of the goods, and if the owner shall receive any damage by such stop; he may bring his action for his reasonable damages. S. 42.

But the officer, if he pleases, may prosecute, notwithstanding the directions of the commissioners; in which case he shall be liable to be sued by the owner for recovery of his goods with full costs;

costs : or if the commissioners shall give no directions for delivery of the goods, the owner nevertheless may sue for them with costs and damages. S. 43.

13. If any foreign goods shall be taken in at sea, or put out of any ship, within four leagues from the coast, without payment of the customs and other duties (unless in case of necessity, or for a lawful reason, of which the master shall give immediate notice and make proof, before the chief officer of the customs of the first port where he shall arrive) ; the same shall be forfeited, and every person aiding or concerned therein shall forfeit treble value ; and the vessel into which the same shall be taken, shall be forfeited, not exceeding 100 tuns ; and the master of the vessel out of which they are taken, shall also forfeit treble value ; half to the king, and half to him that shall seize or sue. 9 G. 2. c. 35. f. 23. Goods taken in at sea.

14. Any officer of the customs or excise (producing his warrant or deputation, if required) may go on board any coasting vessel, and search for prohibited and uncustomed goods, and continue on board during the vessel's stay within the limits of the port ; and if any person shall obstruct him, he shall forfeit 100 l. 9 G. 2. c. 35. f. 29. Officers may search coasting vessels.

15. On oath made before a justice of the peace, that any person is lurking within 5 miles of the sea coast or any navigable river, and there is reason to suspect that he waits with intent to be aiding in running of goods, the justice may grant his warrant to bring him before him ; and if he shall not give a satisfactory account of himself and his employment, or otherwise make it appear that he is not concerned in any clandestine or unlawful business, he shall be committed to the house of correction, to be whipt and kept to hard labour not exceeding one month : And the commissioners of the customs or excise shall cause to be paid to the informer a reward of 20 s. for each offender. 9 G. 2. c. 35. f. 18. Persons lurking within 5 miles of the coast.

But if such person shall desire time for clearing himself, he shall not be punished by whipping or other correction, but committed to the common gaol till he shall so do, or till he find security not to be guilty of any the said offences. S. 19.

16. If any person shall knowingly receive or buy any run goods ; he shall on conviction (after summons) by confession or oath of one witness, before one justice where the offence shall be committed or the offender shall be found, forfeit 20 l. half to the informer, and half to the poor, by distress and sale ; for want of distress, to be committed to prison for 3 months. 8 G. c. 18. f. 10. Buying or receiving run goods.

17. And by the 11 G. c. 30. If any person shall harbour, keep, or conceal, or suffer to be harboured, kept, or concealed, any prohibited or run goods liable to pay customs ; he shall (whether he claim any property in them or not) forfeit the same, and treble value, to be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*, half to the king, and half to him that shall sue. S. 16. Concealing run goods.

18. And if any person shall offer to sale any prohibited goods, or which have been, or are by him pretended to have been run ; the same, together with the package shall be forfeited, and be seized by the party to whom they are offered to sale, or by any officer Offering to sale run goods.

Excise and Customs.

officer of the customs or excise: Provided that if the seizure is within the bills of mortality, then within 24 hours, if elsewhere, within 48 hours, they be put into the king's warehouse near the place of seizure, and if it be far from any such warehouse, then in some excise office near. 11 G. c. 30. s. 18.

And the person offering them to sale, shall also forfeit treble value. S. 19.

And the said goods, if sold, may be seized (with the package) from the buyer, either by the seller or any such officer. S. 20.

And the buyer shall also forfeit treble value. But both buyer and seller shall not be prosecuted for the same goods, but whether of them shall first prosecute the other shall be discharged; but if prosecution shall not be commenced in a month, the warehouse keeper may prosecute. S. 21.

Which said forfeitures shall be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; half to the king, and half to him that shall sue. S. 39.

Porter carrying
run goods.

19. All porters, and others, knowingly carrying run or prohibited goods, and who shall be convicted thereof (on appearance or default) on the oath of one witness, or confession, before one justice where the offence shall be committed, or the offender found, shall forfeit treble value, half to the informer, and half to the poor, to be levied by distress by warrant of such justice, and for want of distress to be committed to the house of correction, to be whipt and kept to hard labour not exceeding three months. 9 G. 2. c. 35. s. 21.

Persons armed or
disguised carrying
run goods.

20. Persons passing with foreign goods landed without entry, within 20 miles of the coast, if they be more than 5 in number, or armed, or disguised, or who shall forcibly resist the officers of the customs or excise in seizing run goods, shall be guilty of felony, and transported for 7 years. 8 G. c. 18. s. 6.

But if any offender shall in two months after his offence, and before conviction, discover his accomplices, so as two or more be convicted; he shall have a reward of 40*l.* if the value of the run goods exceed 50*l.* and shall be acquitted. S. 7.

And any other person discovering any one offender, in 3 months, so as he be convicted, shall have in like manner 40*l.* over and above what he may be intitled to on account of the said run goods. S. 8.

And by the 9 G. 2. c. 35. Persons being two or more in company, who shall be found passing within 5 miles from the coast, or from any navigable river, with one or more horses, or with any cart or carriage, whereon there shall be laden more than 6 pounds of tea, or spirituous liquors exceeding 5 gallons, not having paid the duties, and not having a permit, or any other foreign goods of above 30*l.* value, landed without entry and payment of duties, and shall carry any offensive arms, or wear any disguise, or shall forcibly obstruct, or resist any officer of the customs or excise in seizing or securing any prohibited, uncustomed, or run goods, or other execution of their office, shall be deemed runners of foreign goods, within the meaning of the said act of 8 G. c. 18. altho' no proof shall be made that such goods

were

were run, or had not been entred and paid duty; but the proof of such entry and payment, and how they came by the goods, shall lie on such persons: and every person convicted of any such offence, shall be guilty of felony, and transported for 7 years.

S. 13.

And all the goods so found, weapons, horses, cattle, carriages, and their furniture, chests, bags, casks, and other package, shall be forfeited. S. 14.

And if any officer or other person shall lose any limb, or be otherwise maimed or dangerously wounded by any offender last mentioned, or in endeavouring to apprehend him, he shall on the conviction of such offender have a reward of 50*l.* over and above any other reward he may be intitled to by this act.

S. 15.

And if any person be killed in endeavouring to apprehend such offender, his executors or administrators (on certificate under hand and seal of the judge of assize for the county where the fact was done, or of the two next justices of the peace, of such person being so killed) shall have 50*l.* over and above any other reward they may be intitled to by this act. S. 15.

And if any person shall, in 3 months after such last mentioned offence committed, discover to the commissioners of the customs or excise, any offender so as he be convicted; he shall have 50*l.* over and above any other reward he may be intitled to by any law. S. 16.

And the commissioners of the customs or excise shall cause the rewards to be paid out of the said revenues, on producing a certificate under the hand of the judge certifying the conviction, or on producing such certificate of the person being killed: and if any dispute shall arise between the persons intitled to the reward, the same shall be adjusted by the commissioners. S. 17.

21. And upon information on oath before a justice of the peace, that any persons, to the number of 3 or more, are or have been assembled, to be aiding in the clandestine running, landing, or carrying away prohibited and uncustomed goods, or to rescue them after seizure, and armed with fire arms or other offensive weapons; he shall grant his warrant to the constables and other peace officers, requiring them to take to their assistance as many as may be thought necessary for apprehending such persons; and he may, if on examination he find cause, commit them to the next county gaol, there to remain without bail or mainprize, until they be discharged by due course of law: and such persons, on conviction of their being assembled and armed as aforesaid, shall be adjudged guilty of felony, and transported for 7 years. 9 G. 2. c. 35. s. 10.

Apprehending
riotous smug-
glers.

And the apprehender for every person convicted shall have a reward of 50*l.* immediately after conviction and demand made, tendering a certificate under the hand of the judge, certifying the conviction, and that he was taken by the person claiming the reward. S. 11.

And if any person shall lose a limb, be maimed, or dangerously wounded, in apprehending or endeavouring to apprehend, or pur-

suing such offender; he shall on such conviction have a reward of 50*l.* over and above any other reward that he shall be intitled to by this act. S. 11.

And if any person shall be killed in taking, or endeavouring to take such offender; his executors or administrators (on certificate under the hand and seal of the judge of assize of the county where the fact was done, or of the two next justices of the peace, of such person being so killed) shall have a reward of 50*l.* over and above any other reward they may be intitled to by this act. S. 11.

And if any offender shall in 3 months after his offence, and before his conviction, discover two or more accomplices, to the commissioners of the customs or excise, so as two be convicted; he shall have 50*l.* for every person so convicted, and be discharged of his offence. S. 12.

The said rewards to be paid as in the last section.

Smugglers indemnified for offences before May 1. 1745.

22. By the 18 G. 2. c. 28. All persons, who before May 1. 1745. have incurred any penalty for running of goods are indemnified. But if any person having been guilty of any such offence, for which he is liable to be transported, shall take the benefit of this act, and afterwards commit any the like offence; he shall be guilty of felony without benefit of clergy.

Outlawed smugglers.

23. And by the 19 G. 2. c. 34. If any persons, to the number of 3 or more, armed with fire arms or other offensive weapons, shall be assembled in order to assist in the exportation of goods prohibited to be exported, or in running any prohibited or uncustomed goods, or goods liable to pay duties which have not been paid, or in relanding goods after drawback, or in rescuing the same after seizure, or in rescuing any person apprehended for any offence made felony by any act relating to the customs or excise, or in preventing his being apprehended; or if any person shall have his face blacked, or wear any disguise, when passing with such goods; or shall forcibly hinder or assault any officer in the seizing such goods, or dangerously wound any officer attempting to go on board any vessel, or shoot at or wound him when on board; he shall be guilty of felony without benefit of clergy. S. 1.

And persons charged with any the said offences, before a justice of the peace, by information on oath of one or more credible persons to be subscribed by him or them, the justice shall forthwith certify the same under his hand and seal, and return the information to one of the secretaries of state, who shall lay the same before the king in council; who may thereon make his order, commanding the offender to surrender in 40 days after the first publication thereof in the gazette, to the lord chief justice, or any other of the justices of the king's bench, or to some justice of the peace who thereon shall commit him to gaol, to answer the charge against him according to due course of law: Which order the clerks of the privy council shall cause to be forthwith published in the two successive gazettes, and to be transmitted to the sheriff where the offence was committed; who shall in 14 days cause the same to be proclaimed between 10 in the morning and

2 in the afternoon, in the market places, on the market days, of two market towns in the same county, near the place where the offence was committed; and a copy of the order shall be affixed on some publick place in the said towns: And if such offender shall not surrender pursuant to such order, or escape after surrender, he shall be attainted of felony without benefit of clergy.

S. 2.

And if any person after the time appointed for surrender, shall knowingly harbour such offender; he shall, on conviction within one year, be guilty of felony, and transported for 7 years.

S. 3.

And every person who shall take, or discover so that he may be taken, any person so advertised and not surrendring, and cause him to be brought before a judge of the king's bench, or justice of the peace for *London* or *Middlesex* (who shall commit him to *Newgate*), shall receive 500*l.* in one month after execution awarded, from the commissioners of the customs or excise respectively: And if an offender, against whom no such order in council shall have been made, shall himself so discover or apprehend any other against whom an order hath been made; he shall be acquitted of all his own offences for which no prosecution is then commenced, and shall also have his share of the *præmium*: And if any person shall be maimed or grievously wounded in apprehending such offender; he shall receive 50*l.* over and above such other reward as he may have as apprehender: And if any person shall be killed in apprehending, his executors or administrators shall receive 100*l.* S. 10.

But nothing herein shall prevent ministers of justice from taking such offender by the ordinary course of law; but if he shall be taken before the expiration of the time limited for his surrender, no further proceedings shall be had upon the order made in council, but the offender shall be brought to trial by due course of law.

S. 4.

And if any offender, before order for his surrender, shall discover two or more accomplices, so as they be convicted; he shall receive 50*l.* for each, and be discharged of all offences for which no prosecution shall be then commenced. S. 11.

24. If any persons passing in a publick and avowed manner, with prohibited or uncustomed goods, and armed with pistols, guns, cutlasses, or other offensive weapons, shall molest or resist the officers of the customs or excise, endeavouring to seize the same, by beating, maiming, or wounding them, or any person assisting them; they may oppose force with force: and if any person so resisting the officers be wounded, maimed, or killed; such officers, or persons assisting them in their defence, may plead the general issue, and give this act and the special matter in evidence; and all justices of the peace, and others, before whom they shall be brought, shall admit them to bail. 9 G. 2. c. 35.

S. 35.

25. By the 13 & 14 C. 2. c. 11. Where any officer of the customs shall be by any person armed with club or any manner of weapon, forcibly hindred, affronted, abused, beaten, or wounded, Dangerously & hurting an officer, finable,

Excise and Customs.

wounded, to the hazard of their lives, either on board any ship, or on the land or water in execution of their office; every person so abusing any such officer or his deputy, or such as shall act in his aid or assistance, shall by the next justice or other magistrate be committed to prison to the next quarter sessions; and the said sessions shall punish him by fine, not exceeding 100*l.* and the offender to remain in prison, till he be discharged by order of the exchequer both of the fine and of the imprisonment; or discover the person that set him on work. S. 6.

By 8 or more,
transportation.

26. And by the 6 G. c. 21. If any officer of the customs be forcibly hindred, wounded, or beaten, in the due execution of his office, by any persons armed with any manner of weapon, tumultuously assembled by day or night, to the number of 8 or more; the offenders shall be transported for any term not exceeding 7 years. S. 34, 35.

And if any offender shall in two months after his offence, and before conviction, discover his accomplices so as two be convicted, he shall have 40*l.* reward for each, and be acquitted. S. 36.

And if any other person shall in 3 months discover any offender so as he be convicted, he shall have 40*l.* over and above any other reward on account of the run goods. S. 37.

The same to be paid by the receiver general, or cashier of the customs, on producing the judge's certificate. S. 38.

Opposed on ship-
board, transpor-
tation.

27. And by the 9 G. 2. c. 35. more generally it is enacted, that if any officer of the customs or excise, being on board any ship, be forcibly hindred, wounded, or beaten, in execution of his office, either by day or night; the offender shall be transported for 7 years. S. 28.

Hundred shall
answer damages.

28. And by the 19 G. 2. c. 34. *f.* 6. If any officer or other person employed in seizing any goods forfeited for being prohibited or uncustomed, or for not having paid duty, or by virtue of any law to prevent the exportation of goods, or in endeavouring to apprehend offenders against this act, shall be beaten or killed, or the goods seized be rescued; the hundred shall answer damages, and also pay 100*l.* to the executors or administrators of such person killed, so as the sum for beating exceed not 40*l.* nor for the loss of goods 200*l.* to be recovered and levied as in cases of robbery by the 8 G. 2.

But no person shall recover damages for such beating or loss of goods, unless he give notice in 4 days to two inhabitants near, and in 8 days make oath before a justice, whether he knew any of the persons concerned, and if he did, he shall be bound over to prosecute; and unless, besides the said notice and recognizance, he give such also as persons robbed by the 8 G. 2. are directed to give. *Id.* *f.* 7.

And where the offender shall be convicted in 6 months, the hundred shall not be liable. S. 8.

Also the action against the hundred must be commenced within a year. S. 9.

Felonies in rela-
tion to the cu-
stoms may be
tried in any
county.

29. Offences relating to the customs or excise, made felony by any act, may be tried in any county; but the attainder shall work no corruption

corruption of blood, loss of dower, or forfeiture of lands.
19 G. 2. c. 34. s. 5.

II. Of the excise in general.

1. One principal head office of excise shall be kept in *London*, Head office, and
or within ten miles thereof, to which all other offices in the king- commissioners.
dom shall be subordinate and accountable; which said office shall
be managed by such commissioners as the king shall appoint.
12 C. 2. c. 24. s. 46. 5 W. c. 20. s. 16.

2. And all places within the bills of mortality shall be under Subcommis-
the immediate care and management of the said head office; and sioners.
such, and so many subordinate commissioners, and subcommis-
sioners, and other officers shall be appointed by the king in other
places, as he shall think fit. 12 C. 2. c. 24. s. 48.

3. And the excise office in all places where it shall be appointed, Office when to
shall be kept open from 8 in the morning, till 2 in the afternoon. be kept open.
23 G. 2. c. 26. s. 12.

4. And the commissioners or subcommissioners shall appoint Office in market
under their hands and seals, such persons as they shall think need- towns.
ful in each market town, to be there upon every market day, in
some known and publick place, for receiving entries and duties,
and performing all other things touching the revenue of excise:
And if such office shall not be so kept in each market town, the
commissioners or others neglecting or refusing, shall for every mar-
ket day forfeit 10 l. And such person as shall come to such
market town to make his entry or payment, and tender the same
accordingly, and be able to prove such tender by oath of one
witness, shall not be liable to any penalty for such weekly or
monthly entries or payments, as should have been made or paid
on such market day. 15 C. 2. c. 11. s. 10.

5. The commissioners or subcommissioners in their respective Gagers.
circuits and divisions, shall constitute under their hands and seals,
such and so many gagers as they shall find needful. 12 C. 2.
c. 24. s. 33.

6. No person shall be capable of intermeddling with any office Officer's oath.
relating to the excise, until he shall before two justices in the
county where his employment shall be, or before a baron of the
exchequer, take the oaths of allegiance, supremacy (and abjura-
tion), together with this oath following;

*You shall swear to execute the office of ——— truly and faith-
fully, without favour or affection, and shall from time to time true
account make and deliver to such person and persons as his majesty
shall appoint to receive the same, and shall take no fee or reward for
the execution of the said office, from any other person than from his
majesty, or those whom his majesty shall appoint in that behalf.*
12 C. 2. c. 24. s. 47.

And the justices shall certify the taking of such oath, to the
next quarter sessions, there to be recorded. S. 48.

And the officer shall also enter a certificate thereof with the
auditor of the excise: And if any such person shall act before
X 3 he

he hath taken the said oaths, and entred his certificate with the auditor aforesaid, he shall forfeit 50*l.* a month. 15 G. 2. c. 11. s. 27.

Penalties by the
excise laws.

7. In the act of the 24 G. 2. c. 40. There is a general clause, which has a controlling influence on all that hereafter follows in this large title; which is this: *All fines, penalties, and forfeitures, imposed by this or any other act relating to the duties of excise, or other duties under the management of the commissioners of excise, shall be sued for, levied, recovered, or mitigated by such ways and means as any fine, penalty, or forfeiture is or may be recovered or mitigated by any law or laws of excise, or in the courts at Westminster, and shall be half to the king, and half to him that shall inform or sue.* S. 33.

By two justices.

8. That is to say, *If it is within the limits of the chief office in London, they shall be determined by the commissioners (or any three of them, 1 G. 2. st. 2. c. 16. s. 4, 5.) or, in case of appeals, by the commissioners of appeals: in all other places, they shall be heard and determined by any two or more justices of the peace, residing near to the place where such forfeitures shall be made, or offence committed: And in case of neglect or refusal of such justices by the space of 14 days next after complaint made, and notice thereof given to the offender; then the subcommissioners may hear and determine the same; And if the party find himself aggrieved by the judgment given by the said subcommissioners, he may appeal to the next quarter sessions, whose judgment therein shall be final. Which said commissioners for appeals, and chief commissioners for excise, and all justices of the peace, and subcommissioners aforesaid, are required upon any complaint or information exhibited and brought, of any such forfeiture made or offence committed, to summon the party accused, and upon his appearance or contempt to proceed to the examination of the fact, and on due proof made thereof either by the voluntary confession of the party, or by the oath of one credible witness, to give judgment or sentence, and to issue warrants under their hands, for levying the same on the goods and chattels of the offender, and to cause sale to be made thereof, if not redeemed in 14 days; and for want of sufficient distress, to imprison the party offending till satisfaction be made.* 12 C. 2. c. 24. s. 45.

Residing near] Mr. Shaw, who seems to have taken some pains on this article (and after whom Mr. Barlow hath copied without owning it) saith hereupon, that where the *next* justices are empowered to proceed in any matter, they and no other ought in such case to act; but where it is only directed, that the justices *residing near* shall do such a thing, those words are not restrictive, but only directory, and any justices, altho' not the *next* justices, may proceed therein. *Shaw Exc.*

But Mr. Shaw extends these words further (to which Mr. Barlow doth not assent), and thinks that the words *any two justices near* do imply, that the justices of a county, dwelling near to a town corporate which hath an exclusive charter, may nevertheless hear and determine offences committed within such town corporate; which opinion seems justly questionable.

Upon any complaint or information exhibited] By these words it is not necessary that the information be exhibited *in writing*; but if it is a verbal information, the justices ought to make a record thereof, and of the time and place, when and where exhibited, which must be expressed in the present, and not in the time past: But to save the justices that trouble, it is usual for the informer to prepare his information in writing; and by way of preface thereto, to make a memorandum of the time and place of the laying such information, leaving therein blanks for the names of the justices, and the day and month and year and place when and where laid; and when those blanks are filled up by direction or consent of the justices, then it becomes a record made by them. The mentioning the place where the information is laid, is, that it may appear that the prosecution was in the proper county; and therefore tho' it may happen, that for laying the information, the prosecutor may be obliged to attend one justice in one town, and another justice in another town, it must not be mentioned, that the information was laid at both towns, for that would be absurd; but in such cases it is usual to express that the information is laid at the town where the hearing is intended to be. *Shaw Exc.*

Proceed to the examination of the fact] And by 9 G. 2. c. 35. it is enacted, that in trials of seizures, the justices shall proceed to the merits of the cause, without inquiring into the form or manner of seizure. *s. 34.*

Give judgment] Altho' it hath been said, that whatever is recorded by the justices or their order, ought to be expressed in words of the present time and tense; yet that doth not make it necessary, nor is it indeed practicable, that all that is to be so entred should actually be entred at the instant of time when such judgment is given; for such entring the whole at that time would hinder the dispatch of business, and delay the hearing of causes, and therefore may be done at any convenient time after; which if it be agreeable with, and according to such short minutes or notes as are then taken by such justices, it will be as authentick as if it had been entred at the instant of time in which such order was made, or judgment was given. *Shaw Exc.*

And to issue warrants under their hands] Therefore such warrants will be sufficient, tho' it be only under the *hands* of the justices, and not under their seals; however the adding their seals can do no hurt, and may make the persons concerned more readily submit to such warrant. *Shaw Exc.*

And to cause sale to be made thereof if not redeemed in 14 days] But by the 27 G. 2. c. 20. the justices may not order the distress to be detained more than 8 days, nor less than 4.

For want of sufficient distress] Mr. *Shaw* and Mr. *Barlow* are of opinion, that where there are some goods, but not sufficient for satisfying the judgment, yet those goods may be applied for that purpose so far as they shall extend, and the defendant shall be imprisoned for the residue; which may seem hard sometimes, when the defendant shall perhaps satisfy nearly the whole sum,

and moreover be imprisoned as much as if he had paid nothing; and it hath been adjudged in other cases, that a man shall not first pay part, and then be imprisoned for the residue, but shall either pay the whole, or be imprisoned for the whole: but perhaps the distinction may be this; where there is a limited time of imprisonment, as for instance 3 months, there the defendant shall not pay part, and then be imprisoned the whole three months, which would be to punish him both ways; but where the imprisonment is till the penalty shall be paid, there the payment of the penalty is the thing chiefly regarded, and the imprisonment is not intended as a punishment, but as a mean to compel the payment of the penalty, and if part of it is paid already, the enlargement may come the sooner, by payment of the residue.

Imprison the party till satisfaction be made] But before any warrant can be made to arrest and imprison the person of the defendant, there must be first a warrant to seize the utensils in custody of such offender, and the offender's goods; and that warrant must be returned: all which must be done, before any warrant can be regularly made, to arrest and imprison the defendant's person. Which method ought to be observed, tho' perhaps it may be well known by, or sufficiently proved before the justices, that all the utensils and all the defendant's goods are carried off; for the law being in all cases very tender of depriving men of their liberty, it is necessary that all possible means should be used to levy the money on such goods, before the person of the defendant be imprisoned. But if a warrant to seize the utensils and the goods, be made and delivered to an officer to be executed; and if such officer, having made diligent search, cannot find any such, then a warrant may be made to arrest and imprison the person of the defendant. But then there ought to be a duplicate made of such warrant; because the keeper of the prison cannot regularly receive the offender without a warrant, and the officer ought also to have and keep a warrant for his own justification. *Shaw Exc.*

Summoning witnesses.

9. By the 7 & 8 W. c. 30. The commissioners and justices may summon witnesses, to appear before them at a certain day, time, and place, to be inserted in such summons, and to give evidence; and in case of neglect or refusal to appear, or if upon appearance any shall refuse to give evidence, he shall forfeit 10 l. s. 24.

Officer on trial need not produce his commission.

10. If upon trial, any question shall arise, concerning the keeping of any office of excise, or concerning any person's being an officer; proof shall be admitted of the actual keeping of such office, or of such person's actually exercising such office, without proving or producing the commission. 6 G. c. 21. s. 24. 11 G. c. 30. s. 32.

Proof to lie on the owner.

11. If on trial any dispute shall arise, whether the excise or other inland duties have been paid for any foreign goods seized; the proof shall lie on the owner, and not on the officer. 12 G. c. 28. s. 8.

Sworn valuers.

12. One or more justices shall have power to administer an oath to any person skilled in the value of goods, vessels, or carriages,

riages, mentioned to have been seized in any information exhibited before the justices, to view the same, and make return of the species, quantity, and value; and after condemnation, the said goods shall be sold where the commissioners shall think proper.

12 G. c. 28. s. 16.

13. *The justices, commissioners, or subcommissioners respectively, where they shall see cause, may mitigate, compound, or lessen the forfeiture, penalty, or fine; so as the same be not made less than double the value of the duty of excise which ought to have been paid, besides the reasonable costs and charges of such officers, or others, as were employed therein, to be to them allowed by the said justices.* Mitigation,

12 C. 2. c. 24. s. 46.

Mitigate] But it is not necessary in the mitigation, to mention or distinguish so much for the offence, and so much for the charges; but after the justices have agreed what sums to allow for the charges, the best way will be to add those two sums together, and make their mitigation to such sum, as both when added together do amount unto: as suppose the justices do intend, that the defendant shall pay 10*l.* for the offence, and 40*s.* for the charges, the best way will be to make their mitigation to 12*l.* without particularly mentioning that 10*l.* thereof is for the offence, and that the 40*s.* is for the charges; for in all cases it is wrong to insert in judgments more words or particulars than are necessary; and it is more particularly wrong in these cases, because the mentioning such unnecessary particulars may give a handle for cavils and disputes. *Shaw Exc.*

Costs and charges] Generally, the law doth not allow any costs or charges to be recovered on any penal law; and therefore to intitle the prosecutor to costs, over and above the penalty, express words for that purpose are necessary in an act of parliament. *Shaw Exc.* But by the 27 G. 2. c. 20. the constable out of the money arising from the sale of the distress, may detain his reasonable charges of taking, keeping, and selling the same.

14. There is no appeal directed in the said statute of 12 C. 2. Appeal. from judgments given by the justices of the peace; for whereas it is enacted, in the said statute, that *if the party find himself aggrieved by the judgment given by the subcommissioners, he may appeal to the next quarter sessions*, these words, not being general, or such as may be applied equally, as well to the judgments given by the justices, as to judgments given by subcommissioners, they must be understood as limited and restrained to such judgments only as are given by subcommissioners, in whom the parliament (it seems) did not so intirely confide as in the justices, but have made the aforementioned distinction between the judgment of the one and of the other; which must be observed and pursued: And therefore, generally, there lies no appeal to the quarter sessions from the judgment given by the justices, in matters relating to the excise. *Shaw Exc.*

Nevertheless, in some particular instances, such power is given by subsequent Statutes; which will be mentioned under the special heads in this title hereafter following.

By

By the 15 G. 2. c. 11. No appeal in any cause of excise shall be admitted, till the appellant hath deposited the single duty with the commissioners or subcommissioners, and given security to the commissioners of appeal, or justices of the peace, where the cause is to be finally adjudged, for such forfeiture as was adjudged against him; and if upon appeal the judgment be reversed, they shall restore the duty so deposited, or so much thereof as shall be adjudged on the appeal; and the party originally prosecuting shall pay double costs; but if the judgment be affirmed, the party appealing shall pay the like costs to the commissioners. *f. 19.*

And by the same statute, all differences and appeals about the excise, shall be heard in the proper county, and not elsewhere. *f. 22.*

And by the same statute, appeals within *London*, and the limits thereof, shall be within two months after judgment, and notice given or left at the dwelling house of the party; in all other places, in four months, and not otherwise.

Certiorari.

15. It is generally provided by divers statutes, that no *certiorari* shall be allowed to supersede the justices proceedings. 12 G. 2. c. 24. *f. 50.* 22 & 23 C. 2. c. 5. *f. 14.* 6 G. c. 21. *f. 22.*

Treble costs.

16. Persons sued for any thing done on any act relating to the excise, or other duties under the management of the commissioners of excise, may plead the general issue; and have treble costs. 18 G. 2. c. 26. *f. 15.*

Felonies relating to the excise, where to be tried.

17. Offences relating to the excise made felony by any act, may be tried in any county; but the attainder shall work no corruption of blood, or forfeiture of lands. 19 G. 2. c. 34. *f. 5.*

Alehousekeepers harbouring offenders.

18. Any alehousekeeper harbouring an absconded person, against whom a process of arrest hath issued, for any offence against the laws of excise or of the customs, after 6 days notice of such absconding in two successive gazettes, and writing fixed on the door of the parish church where he last dwelt, shall forfeit 100 *l.* and have no licence for the future. 9 G. 2. c. 35. *f. 30, 31.*

Landing foreign excisable liquors before duty paid.

19. No foreign liquors, for which excise ought to be paid, shall be landed, before entry made with the officer or collector of excise, or before the excise shall be paid: and every warrant from any officer of the customs, for landing such foreign liquors, shall be signed by the officer or collector of excise in the port; on pain that the liquors landed otherwise, or the value thereof, shall be forfeited, to be recovered of the importer or proprietor. 22 & 23 C. 2. c. 5. *f. 9.*

Excisable liquors carried coastwise.

20. No person bringing any excisable liquors (except beer, ale, cyder, perry, and metheglin) into any place by coast cocket, transire, or certificate, nor any person to whom the same shall be consigned, shall land the same, without being entred with the officer of excise where landed; on pain of double value. 15 C. 2. c. 11. *f. 18.*

Concerning excisable goods.

21. If any person shall conceal, or suffer to be concealed, any goods liable to the duties of excise and inland duties; he shall (whether he claims any interest in them or not) forfeit the same, and treble value. 11 G. c. 30. *f. 16.*

22. If on request made by any officer of excise, to a constable Constable to be assisting. to go along with him, and to be present at the doing of any thing, at the doing whereof his presence shall be necessary by any statute, he shall neglect or refuse or shall not go along with him, and be present at the doing thereof; he shall forfeit 20*l.* 11 G. c. 30.

f. 31.

23. If any person shall oppose, molest, hinder, or obstruct any officer of excise, in the due execution of the powers given him Obstructing officer. by any act relating to the duties of excise; he shall forfeit 10*l.*

6 G. c. 21. f. 7.

And actions of assault upon any officer of excise, may be tried in any county. 9 G. 2. c. 35. f. 26.

Further penalties for obstructing, wounding, or killing officers, in the case of run goods, have been inserted before, in treating of the customs.

24. If any officer of the excise or customs shall deal in coffee, Officer not to be a dealer. tea, brandy, or other excisable liquors; he shall be incapable to hold any office in the revenue, and forfeit 50*l.* 12 G. c. 28 f. 7.

25. No sworn gager, or other officer, shall take any bribe, for Officer taking a bribe. any matter relating to the excise; on pain of 10*l.* 15 G. 2. c. 11. f. 16.

And a further penalty upon such officer is inflicted, in divers instances hereafter mentioned.

And by the 11 G. c. 30. If any person liable to the duties of excise, or any other duties under the management of the commissioners of excise, shall give or offer to any officer of the said duties any bribe, gratuity, or reward, in order to induce him to omit his duty, or to do contrary to it; he shall forfeit 500*l.* §. 40.

26. No collector, supervisor, gager, or other person concerned Officer meddling in elections. in charging, collecting, levying, or managing the duties of excise, or any part thereof, shall by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for the choice of a member of parliament; on pain of 100*l.* half to the poor, and half to him who shall sue in the courts at *Westminster*; and moreover he shall be incapable to hold any office of trust under the king. 5 W. c. 20. f. 48.

III. Of the several goods in particular, under the management of the commissioners of the customs and excise: viz.

Ale, beer, cyder, perry, mum, metheglin, mead, sweets, verjuice, and vinegar; candles; coaches; coffee, tea, and chocolate; glass; hops; leather; linen cloth and silks; malt; paper; plate; salt; soap; spirituous liquors; starch and hair powder; wire.

i. *Ale,*

i. Ale, beer, cyder, perry, mum, metheglin, mead, sweets, verjuice, vinegar.

- Duty on ale and beer imported. 1. By the several acts relating to that purpose, there shall be paid by the importer before landing, for every barrel of beer or ale imported, in the whole the sum of 18 s.
- On home ale and beer. 2. By the several acts there shall be paid in the whole, for every barrel of beer or ale above 6 s. a barrel, brewed by the common brewer, or any other person who shall sell or tap out beer or ale, the sum of 5 s. and for every barrel of 6 s. a barrel or under, the sum of 1 s. 4 d.
- Duty on cyder and perry imported. 3. For every tun of cyder or perry imported shall be paid 17 l. 10 s. And if they are imported by foreigners, they shall pay 30 s. more.
- Duty on cyder and perry sold by retail. 4. And by six several acts, for every hoghead of cyder and perry sold by retail, there shall be paid by the retailer, the sum of 6 s. 8 d. And by the 12 *An. st.* 1. c. 2. 4 s. more, to be paid by the first buyer or retailer. S. 1.
- But a person buying for his own private use, and not being a dealer, shall not be charged. 26 G. 2. c. 1. f. 21.
- And if they be used for distilling only, they shall not be charged with the said 4 s. 3 G. 2. c. 7. f. 11.
- Note; Every person who shall buy any cyder or perry, or any fruit to make into cyder or perry, and shall sell any of the cyder or perry, shall be deemed a retailer. *Id.* f. 2.
- Duty on mum. 5. For every barrel of mum imported shall be paid the sum of 25 s. And moreover by the 12 *An. st.* 1. c. 2. and 13 G. c. 7. for every barrel of mum made or imported, over and above all other duties, shall be paid by the maker or importer, 10 s.
- Duty on metheglin and mead. 6. For every gallon of metheglin or mead, sold by retail or otherwise, shall be paid by the maker 11 d. $\frac{1}{2}$.
- Duty on sweets. 7. For every barrel of liquor made for sale, by infusion, fermentation, or otherwise, from fruit or sugar, mixed or unmixed with other ingredients, commonly called sweets or made wines, shall be paid 12 s. 10 G. 2. c. 17. f. 2. But this shall not extend to wines made of *British* grapes. S. 7.
- Duty on verjuice. 8. Verjuice made for sale, shall pay as cyder and perry. 7 & 8 W. c. 30. f. 28.
- Duty on vinegar imported. 9. For every tun of vinegar imported shall be paid 13 l. and if imported by strangers 30 s. more. And by the 18 G. 2. c. 9. 8 l. more for *French* vinegar, and other vinegar 4 l.
- Duty on home vinegar. 10. For every barrel (at 34 gallons to the barrel) of vinegar, vinegar beer, or liquors preparing for vinegar, made for sale, shall be paid 11 s. 1 d.

Note; This shall extend to vinegar made for pickles, but not to vinegar for making white lead. 8 *An. c.* 7. f. 4, 5.

And all stale beer, returns of beer or ale, cyder, verjuice, or any other liquors proper to be made into vinegar, which shall be found in the possession of any common vinegar maker (except such as are to be drank in his family, and which shall be kept separate for

for that purpose) shall be deemed vinegar, or liquors preparing for vinegar. 10 & 11 W. c. 21. f. 11.

11. By the 15 G. 2. c. 11. No common brewer, innkeeper, victualler, or other retailer of beer or ale, shall without first giving notice at the next office of excise, or to the commissioners, or sub-commissioners, or one of them, erect, alter, or enlarge, any tun, fat, back, cooler, or copper, and make use thereof for brewing or making any beer, ale, or worts; on pain of 50*l*. And every other person, in whose occupation any house, outhouse, or other place shall be, where any such private tun, fat, back, cooler, or copper shall be found, shall also forfeit 50*l*. And the same, together with all beer, ale, or worts therein, shall be taken up, seized, and forfeited. S. 1.

Notice and entry
of vessels and
places for ma-
king the same.

And by the 8 & 9 W. c. 19. If any common brewer shall, without notice given at the next office of excise, set up any tun, batch, float, cooler, or copper, or alter and enlarge the same, or have any of them private or concealed; he shall forfeit 200*l*. S. 8.

And the officer of excise, in the day time, and in the presence of a constable, where he shall have just suspicion, that any private back, tun, or other concealed vessel or receptacle are used by any brewer, maker, or retailer of excisable liquors, on request first made, and cause declared, may break open the door, or any parr of his brewhouse, warehouse, or other room in his possession, and enter, and break up the ground in such house or room, or ground near adjoining in his possession, to search for such back, tun, or other vessel, or any pipe or conveyance leading thereto; and if he finds any private pipe or other conveyance, he may search and follow the same, and if it shall lead into any ground, house, or place in the possession of any other person, on like request, and with a constable, he may enter the same, and break open the ground, or any part of the house if occasion shall be, to follow such private pipe, in order to find out such concealed back, tun, or vessel, making good the ground or house so broken up, or giving reasonable satisfaction to the owner: And if any person shall oppose such officer, he shall forfeit 20*l*. 7 & 8 W. c. 30. f. 27.

And if any *vinegar maker* shall without giving such notice, use any storehouse, warehouse, cellar, or other place for making or keeping any vinegar, vinegar beer, or liquors preparing for vinegar; he shall forfeit 50*l*. 10 & 11 W. c. 21. f. 14.

In like manner the maker of *sweets* for sale shall first give such notice, of his name and place of abode, and of the rooms and places he intends to use for making or keeping of sweets or made wines; on pain of 20*l*. 10 G. 2. c. 17. f. 4. And any person who shall sell or use any the materials abovementioned, in making of wines, and in whose custody above two gallons shall be found, shall be deemed a maker of sweets for sale. 10 & 11 W. c. 21. f. 5.

In like manner, persons buying fruit to make into *cyder* or *perry* for sale, shall make entry of their storehouses, cellars, and other places, at the excise office within the district; on pain of 50*l*. 26 G. 2. c. 1. f. 22.

Private pipes.

12. No common brewer shall keep any pipe or stop cock under ground, or any other private conveyance, by which any beer, ale, or worts may be conveyed from one tun or brewing vessel to another, or into any other place, nor shall have any hole in any tun, batch, or float, by which any beer, ale, or worts may be conveyed into or out of the same; on pain of 100 *l.* 8 & 9 *W.* c. 19. s. 4.

And the excise officer in the day time, and in presence of a constable, on request made, and cause declared, may break up the ground in any common brewhouse, or the ground near adjoining, or any wall, partition, or other place, to search for any such private pipe or other conveyance, and on finding may follow the same, and break up the ground, house, wall, partition, or other place, thro' or into which the same shall lead, and break up or cut such pipe or other conveyance, and may turn any cock to try whether it can convey as aforesaid. S. 5.

And if on search no such pipe or other private conveyance shall be found, the officer shall make good the ground, wall, or other place so broken up, or make satisfaction to the owner: And if any person shall oppose such officer, he shall forfeit 50 *l.* S. 6.

But any common brewer may use any pipes, stop cocks, or other conveyances above ground, which are publick and in open view, for letting his worts out of his copper into his publick backs or coolers; and out of the same into his tuns, batches, or floats; or out of the tun into his casks. S. 7.

Private cellar.

13. No common brewer, innkeeper, victualler, or other retailer of beer or ale, shall use or keep any private storehouse, cellar, or other place for laying of any beer or ale, or worts, in cask; on pain of 50 *l.* and every other person in whose occupation any such place shall be, shall also forfeit 50 *l.* 15 C. 2. c. 11. s. 1. 1 *W.* s. 1. c. 24. s. 11.

Private person suffering liquors to be brewed in his house.

14. If any person inhabiting in a market town, city, or town corporate, or parts adjoining to a city or town corporate, where there is a common brewhouse, having and lawfully using any private brewing vessels for making beer and ale to be consumed in his own private family, shall permit any beer, ale, or worts to be brewed in his house, or other place thereunto adjoining, other than for his own family, servants, labourers, or to others by way of charity, hospitality, or free gift; or shall lend out any of his brewing vessels, other than which are moveable and unfixed, he shall forfeit 50 *l.* 22 & 23 C. 2. c. 5. s. 10.

Gager to enter and take account.

15. The gager shall at all times, as well by night as by day (and if by night, then in presence of a constable) be permitted upon his request to enter the brewhouse, and all other houses and places belonging to or used by any person brewing of beer, or by any retailer of beer, ale, worts, perry, cyder, or metheglin; and to gage all coppers, fats, and vessels in the same; and to take an account of all such liquors brewed or made therein; and thereof shall make return in writing to the commissioners or subcommissioners; which return shall be a charge upon such brewers, makers, or retailers. 12 C. 2. c. 24. s. 33.

And

And if any brewer shall bribe the gager to make a false return, he shall forfeit 10 *l.* and the officer taking the bribe shall also forfeit 10 *l.* 15 C. 2. c. 11. f. 16.

And if any such common brewer or retailer shall refuse to permit such gager to enter his brewhouse or other place aforesaid, or to gage or take account of his vessels or liquor aforesaid, he shall be forthwith forbidden by the gager to sell, carry out, or deliver to any of his customers, any beer, ale, or other the liquors aforesaid; and if he shall after such warning given, sell, carry, or deliver out the same, or any part thereof, not having paid the duty of excise, he shall, besides the forfeiture of double value, forfeit also the sum of 10 *l.* 12 C. 2. c. 24. f. 33.

And by the 7 & 8 W. c. 30. If any common brewer, innkeeper, or victualler, shall on request or demand made by the gager in the day time, or in the night in presence of a constable, refuse to permit him to come into his house, brewhouse, or other place used by him; or being entred, shall refuse him to stay in the brewhouse, whilst his guile is brewing, and quietly gage and take an account of the several worts as they are brewed off, and let into his backs and tuns, and to see their strong and small drink cleansed and carried out without mixture, and to take an account of the goods in the mesh tun, or the quantity of malt from which such worts are made; he shall forfeit 20 *l.* and the prosecutor shall not be obliged to prove that the party carried out any part of such guile before he paid the duties. S. 22.

And by the said act, if any maker of *vinegar*, *cyder*, *metheglin*, *mead*, or *sweets* for sale, shall conceal any vinegar, or liquor prepared for vinegar, or any cyder, metheglin, mead, or sweets from view of the gager; he shall for every barrel of vinegar or liquor prepared for vinegar, or sweets, forfeit 40 *s.* for every hoghead of cyder 40 *s.* and for every gallon of metheglin or mead 5 *s.* S. 16.

And if any maker or retailer of vinegar, or other the liquors last mentioned, shall on request or demand made by the gager in the day time, or if by night in the presence of a constable, refuse to permit him to enter his house, storehouse, or other place used by him, and to take account of the said liquors; he shall forfeit 15 *l.* S. 17.

And by the 4 G. c. 3. Every dealer in *cyder* or *perry*, and person receiving it into his custody, shall be chargeable with the duties, unless they shall make it appear, either that it was made of fruit of their own growth, and not of bought fruit, or that the duty is paid; and if such person on request made by any officer of excise in the day time, shall not permit him to enter his cellars, storehouses, or other places, and by gaging or otherwise to take account of all cyder and perry there found, he shall forfeit 20 *l.* S. 11.

16. As often as there shall be occasion, two able artists shall be appointed, one of them by the commissioners or subcommissioners, and the other by the brewers of any city or place; who shall be sworn before a justice, to take and compute the just contents and gage of all coppers, fats, tuns, backs, and coolers, and all other brewing

Indifferent gagers may be sworn.

brewing vessels of that nature, and to deliver under their hands one copy of the contents to the commissioners and subcommissioners, and another to each respective brewer. 15 C. 2. c. 11. f. 7.

Brewer to declare how much he intends to make.

17. Every common brewer who shall make any guile of beer or ale, shall declare to the gager, how much strong beer or ale he intends to make of such guile, and how much small, before any part of the guile is cleansed or removed out of his tuns; and if such brewer or his servants shall refuse to make such declaration, the gager shall return the whole as strong, and the brewer shall also forfeit for every barrel in such guile 20 s. And if such brewer or his servants, after such declaration shall make any increase of the strong beer or ale, or if the gager shall find any beer, ale, or worts of the same guile laid off, over and above the quantity so declared; he shall forfeit for every barrel so increased, laid off, or found over and above such quantity 5 l. and the servant assisting therein 20 s. and in default of payment be imprisoned 3 months: And if on an information against the brewer for the said penalties, it appear by his evidence, that the strong beer or ale so declared, was increased by adding to or mixing with it any beer or ale that was left in the brewhouse of a former guile, he shall nevertheless incur the penalties, except it be also proved upon oath that the strong beer or ale so added to such guile, was added in the sight and view of the gager. 8 & 9 W. c. 19. f. 2.

Mixing drink of a former brewing.

18. And whereas many brewers, having strong beer or ale remaining in the brewhouse from the time it was brewed, until the next guile or brewing, the quality of which they frequently alter by mixing with the same new small beer, or old returned drink, and then add the beer and ale so altered to the next guile; if it shall appear to the gager that the quality of such strong beer or ale so remaining in the brewhouse of a former guile, and added to a guile of new drink, hath been so altered since it was brewed, he shall return all such beer and ale so altered and added to a guile of new drink, as if the same were then originally brewed, and had never been charged before. 8 & 9 W. c. 19. f. 3.

Removing drink before the whole is brewed off.

19. If any common brewer, innkeeper, or victualler, shall cleanse, or remove out of his brewhouse, any part of his guile or brewing of beer, ale, or worts, before the whole of such guile is brewed off, and be in his tuns, backs, or coolers, and until the gager shall or might have taken an account of the same, without first giving notice to the supervisor or gager, at what time, and how much of such guile or brewing he intends to cleanse or remove, and where he intends to dispose of the same; he shall for every barrel forfeit 40 s. 7 & 8 W. c. 30. f. 21.

Gager may charge for worts missing.

20. Where it shall appear to the gager, that any worts are missing, or not fairly let down into the tun, and the gager cannot find the same, he may charge for so much beer or ale, as such worts so missing would reasonably make. 1 W. st. 1. c. 24. f. 6.

Gager may be taken in warm worts.

21. Gagers may take their gages, and make their returns and charges, upon warm worts in the backs, coolers, or other vessels; and in such case make allowance of one tenth part thereof for wash

wash and waste; which worts shall not be afterwards charged, when made into beer or ale. 1 *W. B.* 1. c. 24. f. 7.

22. If any common brewer, innkeeper, victualler, or other retailer of beer or ale, shall after an account hath been taken by the gager, convert any small beer or small worts into strong beer or ale, by mingling the same, and shall sell, deliver out, or retail the same, without giving notice to the same gager, of the quantity so mingled and converted; or if any such brewer or retailer shall conceal or convey any beer, ale, or worts not gaged, from the sight of the gager, whereby the king may be defrauded of the duty; he shall forfeit 20 s. a barrel. 15 *C. 2. c. 11. f. 12.* 1 *W. Bess.* 1. c. 24. f. 11. Mixing small beer with strong.

23. No common brewer shall sell, deliver, or carry out any beer or ale to any of his customers, either in whole cask or by the gallon, in any city or market town, before notice given to an officer of excise, but between 3 in the morning and 9 in the evening from *Mar. 25. to Sep. 29.* and between 5 in the morning and 7 in the evening between *Sep. 29. and Mar. 25.* on pain of 20 s. a barrel. 15 *C. 2. c. 11. f. 11.* Time of delivering out.

And by the 10 & 11 *W. c. 21.* No vinegar maker shall receive into his custody any liquors for making of vinegar, nor deliver out any vinegar in casks or by the gallon, without notice first given to the officer, unless from *Sep. 29. to Mar. 25.* yearly, between 7 in the morning and 5 in the evening; and from *Mar. 25. to Sep. 29.* between 5 in the morning and 7 in the evening; on pain of 50 l. s. 12.

And on receiving such liquors into his custody, he shall shew the same to the gager before he mix them with any other liquors, rape, or other materials; on pain of 20 l. *Id. f. 13.*

24. If any common brewer, or innkeeper, shall on carrying out his drink, or after it is carried out, mix any small beer or small worts, with any strong beer or ale on his dray, or in any victualler's cellar, or other place; he shall forfeit 5 l. and the gager may taste the drink upon the dray, and also on request may enter the cellar or other room in the possession of any innkeeper or victualler that shall receive any drink from a common brewer, and taste the drink in the same; and if the innkeeper or victualler shall refuse him to enter into his cellar or other rooms, or to taste the drink in the same, he shall forfeit 5 l. 7 & 8 *W. c. 30. f. 23.* Mixing after delivered out.

25. No retailer of beer or ale, shall after the receipt thereof from the common brewer, mix any beer, ale, or worts, of extraordinary strength, with any small beer, ale, or worts, in any vessel containing 3 gallons or more; on pain to forfeit for every barrel so mixt, double the duty of excise for strong beer or ale, and so proportionably for any greater quantity. 22 & 23 *C. 2. c. 5. f. 11.* Mixing by the retailer.

26. And for avoiding incertainties in the returns of the gagers, the barrel of beer (within the bills of mortality) shall be 36 gallons of 4 quarts to the gallon, according to the standard in the exchequer; and the barrel of ale 32 gallons: and all other the liquors aforesaid, shall be reckoned according to the wine gallon. 12 *C. 2. c. 24. f. 34.* 1 *W. B.* 1. c. 24. f. 5. Measure and allowance for leakage, within the bills of mortality.

And the common brewer, not selling the same by retail, for waste by fillings and leakage, shall be allowed on every 23 barrels of beer, whether, strong or small, 3 barrels; and upon every 22 barrels of ale, 2 barrels. 12 C. 2. c. 24. f. 36.

But if any common brewer shall make a false entry, and be convicted thereof; he shall, over and above other penalties, forfeit the said allowance for 6 months then next ensuing. 12 C. 2. c. 24. f. 37.

In other places.

27. In all other places, 34 gallons shall be reckoned for a barrel of beer or ale; and the allowance for waste shall be $2\frac{1}{2}$ on every 23 barrels. 1 W. ft. 1. c. 24. f. 5.

Notes of the gage and charge to be left.

28. Notes of every gage, signed by the gagers, containing the inches and tenths of the backs, and wants of the tuns, and quality of the liquors, shall be left by them with the common brewers of ale or beer, or some servant (if demanded) at the time of taking the gages; on pain of 40s. 7 & 8 W. c. 30. f. 46.

And by the same act, the gager shall, within 3 days after the end of every week, deliver to or leave with the brewer or retailer, or their servants, a true copy under his hand, of each respective charge by him made, containing the quantity and quality of the liquors by him charged in such week; and if he shall neglect or refuse (after demand in writing, 12 G. c. 28. f. 30.) to leave such copy, or shall charge such person more than such copy contains, he shall forfeit 10 l. S. 25.

Relief in case of over charge.

29. The commissioners of excise or appeals, or justices of the peace, on complaint of any over charge returned upon them by the gager, shall hear and determine the complaint, and examine witnesses on oath, and thereupon, or by other due proof, may discharge such complainant of so much of his charge as shall be made out before them. 1 W. sess. 1. c. 24. f. 13.

Entry and payment of duties.

30. All common brewers of beer and ale, shall once in every week; and all innkeepers, alehousekeepers, victuallers and other retailers of beer, ale, cyder, perry, or metheglin, brewing, making, or retailing the same, shall once in every month, make entries at the excise office, of all such liquors brewed, made, or retailed in that week and month respectively. 12 C. 2. c. 24. f. 29.

And all such common brewers who do not once a week make due entries, shall forfeit 10 l. And every such innkeeper who doth not make true entries once a month, shall forfeit 5 l. And every alehousekeeper, victualler, or other retailer, who doth not once a month make due entries, shall forfeit 20s. *Id.* f. 30.

And every common brewer who shall not pay within a week after he made his entry, or ought to have made his entry, shall pay double value of the duty; and every innkeeper, alehousekeeper, victualler, or other retailer who shall not pay within a month after he made his entry, or ought to have made his entry, shall pay double value of the duty. *Id.* f. 31.

Provided that no such person shall be compelled to travel for making the said entries or payment of the said duties, or other cause whatsoever touching the same, if he live in a market town, out of the said town; if he live out of a market town, then to

no other place than to the next market town to his habitation in the same county, on the market day. *Id.* f. 32.

But no common brewer shall be prosecuted for any forfeiture for any misentry or short entry, if he shall in one week after the delivery of the copy of the return made by the gager, rectify his entry according to the said return, or otherwise discharge himself.

15 C. 2. c. 11. f. 6.

But no brewer shall have any benefit of this proviso, on any information to be brought against him for non-entry, false entry, or non payment; if it shall appear by the evidence, that he did not *bona fide* shew to the gager all the beer, ale, and worts of each respective guile, for such time for which such copy of the return was made; or if any apparent fraud was acted, to defraud the king of his duty, for any part of the drink brewed in the time for which such copy of the return is made or given by the gager. 1 W. f. 1. c. 24. f. 10.

31. But if any person shall brew, and sell by retail, any small quantities of beer or ale in any fair, who is not otherwise a common brewer or retailer thereof, and shall before such selling and retailing, pay the excise for the same; he shall be freed from all penalties relating to such entries, and the like. 12 C. 2. c. 24. f. 39. Exception of selling in fairs.

32. If any *sweets*, having paid the duty, shall be intended to be removed, the excise officer shall on request give a certificate under his hand, expressing the quantity and quality, and from whom and to whom they are to be sent; and if any maker shall otherwise remove them, or vintner receive them, he shall forfeit 10 s. a gallon, and also the liquor and casks. 6 G. c. 21. f. 22. Permit for removal after duty paid.

33. The commissioners and subcommissioners may compound with innkeepers and others for the duties. 12 C. 2. c. 24. f. 40. Compounding.

But no person who hath compounded shall, during the term of such composition, suffer any beer or ale to be brewed within his brewhouse, for any other common brewer, without first giving notice to the commissioners or subcommissioners, and forthwith paying down the excise thereof; upon pain that as well the brewer who shall brew the same, as the brewer for whom it shall be brewed, shall forfeit 5 l. for every barrel. 15 C. 2. c. 11. f. 14.

34. All the brewing vessels and utensils for brewing, into whose hands soever they shall come, and by what conveyance or title soever they be claimed, shall be subject to all the debts and duties of excise in arrear for any beer or ale made in the said brewhouse; and shall also be subject to all penalties and forfeitures against the laws of excise; and it shall be lawful to levy debts and penalties, and use such proceedings against the utensils therein contained, as it may be lawful to do, in case the debtor or offender using the said utensils had been the real owner thereof. 15 C. 2. c. 11. f. 13. Utensils liable to the penalties and duties.

35. No information shall be brought against any common brewer, or alehousekeeper, vinegar maker, or cyder maker, for any Limitation of actions.

any misentry or offence, but within 3 months after the offence committed; and notice thereof shall be given to him in writing, or left at his dwelling house, within a week after laying and entering the information. 1 *W. sess.* 1. c. 24. f. 16. 12 & 13 *W. c.* 11. f. 17.

Delivering materials to distillers.

36. If any common brewer, or maker of cyder, making beer, ale, or cyder for sale, shall deliver to any distiller or vinegar maker, any wash, tilts, ale-beer, vinegar beer, or cyder, without first giving notice to the gager, what quantity he intends to deliver, and when, and to whom; he shall forfeit for every barrel 20 s. 8 & 9 *W. c.* 19. f. 9.

Exportation.

37. Ale, beer, cyder, or mum, may be exported; paying custom 1 s. a ton. 1 *W. sess.* 1. c. 22.

And on exportation thereof the excise shall be repaid. 22 & 23 *C. 2. c.* 5. f. 15. 7 *G. sess.* 1. c. 20. f. 31.

ii. Candles.

Duty on candles imported.

1. For every pound of tallow candles imported, shall be paid in the whole, by the several acts, 2 d. $\frac{1}{4}$. 2 *W. sess.* 2. c. 4. f. 37. 8 *An. c.* 9. f. 1. 9 *An. c.* 6. f. 11.

For every pound of wax candles imported, 8 d. 8 *An. c.* 9. f. 1. 9 *An. c.* 6. f. 11.

Duty on candles made in Great Britain.

2. For all candles made of wax, or usually called or sold for wax candles (notwithstanding the mixture of any other ingredients) made in *Great Britain*, shall be paid 8 d. a pound:

All other candles 1 d. a pound. 8 *An. c.* 9. f. 1. 9 *An. c.* 6. f. 11.

Rush lights excepted.

3. But the said duties shall not be charged on such small rush lights, as shall be made by any persons to be used in their own houses only, so as none of them be sold or delivered out or made for sale, and so as they be once only dipped in, or once drawn thro' grease or kitchen stuff, and not thro' any tallow melted or refined. 8 *An. c.* 9. f. 31.

Oil not to be used instead of candles.

4. During the continuance of the duties upon candles, no person shall use in the inside of his house, any lamp, wherein any oil or fat (other than oil made of fish within *Great Britain*) shall be burned for giving light; on pain of 40 s. 8 *An. c.* 9. f. 18.

Places of making candles to be entered.

5. No maker of candles shall erect, set up, alter, or use any melting house, workhouse, warehouse, storehouse, shop, room, or other place for the making or keeping of candles, or for the melting or keeping any wax, tallow, or other materials proper to be made into candles; or use any copper, furnace, moulds, or other vessel for melting of wax, tallow, or other materials to be made into candles; without notice thereof being first given in writing at the next office of excise: on pain of 50 l. 8 *An. c.* 9. f. 6.

And all candles, wax, tallow, and other materials for making candles, which shall be found in any private melting house, workhouse, or other place, and all private coppers, furnaces, and other vessels,

vessels, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof. 8 *An. c. 9. s. 17.*

And by the 11 *G. c. 30.* If any maker of candles (except compounders) shall use any melting house, shop, or other place, for making or keeping of candles, or for melting or keeping of wax, tallow, or other materials, or use any copper or other vessel for melting the same, or any moulds or other utensil for making of candles, without having made entry thereof in writing at the next excise office; he shall forfeit 100*l.* 8. 23.

And the officer, between 5 in the morning and 11 in the evening, with or without a constable, and between 11 in the evening and 5 in the morning, with a constable, shall be permitted on request to enter and search; and all chests and other like things locked up, shall on his request be opened; on pain that every person obstructing or molesting him, shall forfeit 100*l.* 11 *G. c. 30. s. 24.*

And if the officer on his searching any unentred house or place, shall find candles either made or making, or tallow or other materials melting or melted, or cottons or rushes spread, or any copper, mould, or other utensil warm with tallow or other materials; this shall be sufficient evidence to convict the offender in the penalty of 100*l.* for having used the same not being entred. 11 *G. c. 30. s. 25.*

And leaving a summons at the place where the discovery was made, directed to the person prosecuted by his right or assumed name, shall be deemed as effectual as if personally delivered to him, and by his proper name. *Id. s. 26.*

6. The officer shall at all times, by day or by night, and if in the night, then in presence of a constable, be permitted on his request, to enter the house, melting house, warehouse, or other place, belonging to, or used by any person who shall be a maker of candles; and by weighing or tale of the candles, or otherwise, to take an account of the quantity; and shall thereof make a return in writing to the commissioners, or to whom they shall appoint; leaving a true copy of such report, under his hand, with or for the maker: and if he shall refuse or neglect to leave such copy (on demand thereof made in writing, 12 *G. c. 28. s. 30.*) he shall forfeit 40*s.* 8 *An. c. 9. s. 10.*

7. And the maker shall keep just scales and weights, where he makes his candles; and shall permit and assist the officer to make use thereof, on pain of 10*l.* 8 *An. c. 9. s. 11.*

8. No maker of candles for sale, shall begin to make any course or making of candles, without notice thereof first given to the officer, unless from *Sep. 29. to Mar. 25.* yearly, between 7 in the morning and 5 in the evening; and from *Mar. 25. to Sep. 29.* between 5 in the morning and 7 in the evening; on pain of 10*l.* 10 *An. c. 26. s. 107.*

9. Every maker of candles for sale, shall before he begins to make or dip any making or course of candles, declare to the officer the number of sticks he designs to make, and the sizes of the candles whereof each stick is to consist; and if such making or course is intended to be of moulded candles, then he shall declare

The maker to keep scales and weights.

Notice and time of making.

Maker to declare the number and sizes.

to the officer, before he begins to fill the moulds, how many moulds he intends to fill at such making, and how often he intends at such making to draw the moulds: and if he shall neglect or refuse to make such declaration, or shall after such declaration make any increase of his number of sticks, or of the sizes of his candles in such making or course; or, in the case of making mould candles, shall fill a greater number of moulds, or draw such moulds oftner than shall be declared; or if he shall, after the weighing of any making of candles by the officer, increase the weight of such candles, by redipping, or otherwise; he shall forfeit 10*l.* 10 *An. c. 26. f. 106.*

And by the 11 *G. c. 30.* If any maker of candles for sale, shall begin to make any course of candles, not being mould candles, or make preparation for the same, without notice in writing to the officer of such his intention, and of the time of the day or night when he intends to begin, and of the number of sticks of which such making is intended to consist, and of the sizes and number on each stick; he shall in default hereof, or if he have at such making more sticks, or more candles, or larger than mentioned in the notice, forfeit 50*l.* and if after such notice, he shall not begin at the time, or within 3 hours of it, such notice shall be void. *S. 27.*

And lighting a fire under a vessel for melting the materials, or finding in such vessel, or in any mould, the materials melted or melting, or cottons or rushes spread or spreading, shall be deemed to be such a *beginning to work*, as shall make him liable to the said forfeiture. *S. 28.*

The officer shall charge for materials missing.

10. The officer shall be permitted to take an account of the quantities of wax, tallow, and other materials; and if he shall miss any that he had taken account of at the last time he was at the maker's, and shall not on demand receive satisfaction what is become thereof, the officer may charge such quantity of candles, as the materials so missing in his judgment would have made, not exceeding 108*lb.* of candles for every 112*lb.* of materials missing, and so proportionably. 8 *An. c. 9. f. 12.*

And if any such maker shall obstruct the officer, he shall forfeit 20*l.* *S. 13.*

Candles spoiled in making.

11. Candles cracked or spoiled in making, may be defaced by the officer, who shall make allowance for the duty. 8 *An. c. 9. f. 29.*

Removing candles before surveyed.

12. No maker of candles shall (on pain of 20*l.*) remove any candles, before the officer hath taken account of the same, without giving to the officer, within the bills, 24 hours notice; and elsewhere, 2 days notice, of his intention to remove the same. 8 *An. c. 9. f. 14.*

Candles unsurveyed to be kept separate.

13. The maker shall keep his candles which have not been surveyed, separate from all other candles which have been surveyed, for 24 hours after making, within the bills, and for 2 days elsewhere; unless they shall have been sooner surveyed by the officer: on pain of 5*l.* 8 *An. c. 9. f. 15.*

Search for candles concealed.

14. If any officer of the excise shall have cause to suspect, that any candles are fraudulently concealed, if it is within the bills, then

then on oath made by such officer before two commissioners, or if it be elsewhere, then upon oath before any justice of the peace, setting forth the ground of his suspicion, they or he may empower such officer by day or night by special warrant (but if in the night, in presence of a constable) to enter into the places suspected, and seize and carry away as forfeited all such candles, together with the package; and if any person shall obstruct such officer, he shall forfeit 100 *l.* 23 *G. 2. c. 21. f. 34.*

15. If any maker of candles for sale, shall mingle candles which have not been weighed by the officer, with those which have; or shall fraudulently remove any before weighing; or conceal any candles or materials: he shall forfeit 100 *l.* 11 *G. c. 30. f. 30.* Further penalty of removing, mingling, or concealing.

16. Every person who shall make any candles within the bills of mortality shall monthly, and elsewhere once in every six weeks, make a true entry in writing, at the next excise office, of all candles by him made within such time; which entry shall contain the weight, number, and size of the candles, and what quantity thereof was made at each course in the several weeks; on pain for every neglect of entry to forfeit 20 *l.* Which entry shall be upon the oath of the maker or his chief workman, according to the best of their knowledge and belief; the said entries and oaths, within the bills, to be made with and administered by such officer as the commissioners shall appoint at the general excise office, and elsewhere by the collectors or supervisors. 8 *An. c. 9. f. 7.* Entry of candles made.

But he shall not be obliged to go further than the next market town, for making such entry. 8 *S. 8.*

17. And the maker shall in 4 weeks within the bills, and elsewhere in 6 weeks, after such entry, pay and clear off the duties; on pain of double duty; and no maker after default in payment shall sell, deliver, or carry out any candles, till he hath paid off the duty, on pain of double value. 8 *An. c. 9. f. 9.* Duty to be cleared off.

18. And if there shall be found in the possession of any maker of candles for sale, any candles not mentioned in the entry made by him, and of which the officer hath not had an account, and the duties have not been paid; he shall be chargeable with the duties, and if he do not pay the same, he shall be liable to double duty, unless he shall prove that the duty hath been paid, or that he bought the same of some other chandler who had paid the duty, and that he gave 6 hours notice in writing to the officer, or at the next excise office, of his intention to buy the same, and of whom. 11 *G. c. 30. f. 29.* Candles not entered, nor duty paid.

19. No person shall expose to sale any candles, unless in his publick shop or warehouse, publick fair or market; on pain of 5 *l.* 8 *An. c. 9. f. 18.* Candles where to be sold.

20. The commissioners or such person as they shall appoint, and in default thereof the collector or supervisor, may compound with persons that make candles for their own private houses, for the duties, at 1 *s.* by the year for every head in the family, to be paid quarterly; and such person shall not be liable to the duties. 8 *An. c. 9. f. 20.* Compounding.

But if any person after composition shall sell or deliver out any candles, or shall permit any other person to make candles in his house or outhouse; or shall have more persons of his family than he shall compound for, without giving notice of them in writing at the next excise office, at or before the next quarter day, and paying the like composition for them, he shall forfeit 5*l.* and lose the benefit of his composition, and be liable to the duties and survey of the officers; and for every pound of candles so privately sold or delivered out or made, shall forfeit 5*s.* S. 21.

And every such compounder, who shall make default in continuing the same, shall in ten days make entry upon oath of all such candles as he shall be possessed of, at the excise office, on pain of forfeiting 20*l.* and the candles of which no such entry shall be made; and in 6 days after such entry, shall pay the duties, on pain of double value of the candles, and his houses and other places shall be liable to the search of the officers. 9 *An. c. 6. f. 14.*

Candles carried coastwise.

21. Cocquets granted for shipping candles, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if they shall be shipped without such cocquet, they shall be forfeited, and seized, together with the package. 23 *G. 2. c. 21. f. 29.*

Exportation and importation.

22. No candles shall be imported, otherwise than in some package, containing at least 224*lb.* of neat candles, and stowed openly in the hold; on pain of being seized and forfeited, together with the package; and the master of the vessel shall forfeit 50*l.* 23 *G. 2. c. 21. f. 27.*

But on information brought against such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the candles were put on board by any mariner without the master's knowledge, the master may apply such mariner's wages, in payment of the forfeiture. 26 *G. 2. c. 32. f. 8.*

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all candles forfeited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be found unshipping or unshipped. 23 *G. 2. c. 21. f. 28.*

Candles for which the duty hath been paid may be exported, and the duty drawn back. 8 *An. c. 9. f. 24, 25, 26.*

But no drawback shall be allowed, on the exportation of any foreign candles imported. 23 *G. 2. c. 21. f. 36.*

And the officers of excise or customs may seize any candles, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe, that the same were made in some private workhouse, or clandestinely imported without payment of duty; or that the same have been exported and relanded after repayment of the duty: and if the party in whose possession the same shall be found, shall not at the hearing of the information, make it appear that the duty hath been paid or secured, he shall forfeit 5*l.* for every 100*lb.* weight, and also the candles and package shall be forfeited. S. 30.

And

And if any foreign candles shall be unshipped, with intention to be laid on land, before entry and payment of the duties, or shall be landed again after shipping for exportation upon debenture; the same, together with the package, vessels, boats, horses, and other carriages, used in landing or conveying the same, shall be forfeited, and may be seized by any officers of the customs or excise; and the persons from whom the same shall be seized shall forfeit 5 *l.* for every hundred weight. S. 31.

And if any person shall knowingly harbour or conceal any candles unlawfully imported, or reloaded after shipping, for exportation upon debenture; he shall, whether he claims any property therein or not, forfeit 50 *l.* for every hundred weight, together with the candles and package. S. 32.

And where any such candles shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation at the next market town on the market day next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof. And the judgment thereon, shall not be liable to any appeal, or to be removed by *certiorari*. S. 33.

23. All the said fines, forfeitures, and penalties, may be re- Power of the covered and mitigated as by the laws of excise, or in the courts at justices. *Westminster*; and distributed half to the king, and half to him that shall inform or sue. 8 *An. c. 9. f. 28.* 11 *G. c. 30. f. 39.* 24 *G. 2. c. 40. f. 33.*

24. And if the party is not satisfied with any judgment of the Appeal. justices on the act of 23 *G. 2. c. 21.* before mentioned, he may appeal to the next quarter sessions, except in the case before mentioned where no person shall claim the goods seized. S. 37.

25. And on informations on the said act of 23 *G. 2.* the mi- Mitigation. tigation shall not reduce the penalty to less than a fourth part, over and above the costs and charges to be allowed. S. 38.

26. And where candles shall be seized for non-payment of du- Proof to lie on ties, or non-entry, and it shall be disputed whether such payment the owner. or entry was made or not, the proof shall lie on the claimer, and not on the officer. 23 *G. 2. c. 21. f. 35.*

27. All candles, materials, and utensils for making of candles, Utensils liable to in custody of any maker of candles, or person in trust for him, the duties and shall be chargeable with all duties in arrear, and subject to all pe- penalties. nalties and forfeitures, in the same manner as if the debtor or offender were the lawful owner. 8 *An. c. 9. f. 19.*

iii. Coaches.

1. For every coach, berlin, landau, chariot, calash with four Duty on coaches. wheels, chaise marine, chaise with four wheels, and caravan, kept by any person for his own use, or to be let out to hire; shall

Excise. (Coaches.)

shall be paid 4*l.* yearly: and for every calash, chaise, and chair with two wheels, kept by any person for his own use, or to be let out to hire; shall be paid 40*s.* yearly. 20 G. 2. c. 10. s. 1.

But this shall not extend to *licensed hackney coaches*, within *London* and *Westminster* and the suburbs thereof, not employed in carrying persons more than ten miles from the said cities. S. 11.

Nor to *coaches kept for sale*: But no such carriage shall, whilst in possession of the coachmaker or other person, be employed for his own use, or for the use of any other person (other than such whose carriage shall be then and there mending), or be let out to hire; on pain of 20*l.* S. 12.

Nor to any *publick stage coach*, which is constantly employed in carrying passengers for hire, on certain fixed days in every week, and not let to hire by way of by-jobb, for a day, or any longer time. S. 7.

Nor to any *post chaise* kept for hire by the postmaster general, or any deputy postmaster: But such post chaises shall in 30 days after letting out the same, be entred by the owners at the next office of excise; and shall (besides the king's arms) have such mark of distinction fixed thereon, as shall be appointed by the commissioners; on pain of 20*l.* S. 8, 9.

And the commissioners shall cause a mark of distinction to be fixed on every such carriage, that shall be let out to hire; and if any person shall let out to hire any such carriage without such figure fixed thereon, or shall take off the same when fixed; he shall forfeit 20*l.* S. 10.

Moreover, no person shall be obliged to pay the said yearly sum of 4*l.* for more than five such carriages kept for his own use only; but if he keep the same for supplying any waiting jobb, by the day, week, month, quarter, or any other time, or to be let out to hire, he shall pay 4*l.* for each, tho' exceeding the number of five; and every person who shall keep such carriage with two wheels, to be let out for hire, shall pay 40*s.* yearly for each, tho' exceeding the number of five. S. 2.

Entry and payment of the duties.

2. Every person who shall keep such coach or other carriage, shall in 20 days after he shall begin to keep the same, and within 20 days yearly after the expiration of 12 kalendar months after the time of giving such first notice,—give notice in writing, at the chief office of excise in *London* (if within the bills); and elsewhere, shall give notice at the next office of excise,—of his keeping the same, and the number, and whether with four or two wheels, and where he resides; and at the same time pay down the duties: on pain of 20*l.* S. 4, 5.

But if the duties are paid, and entry made, before information brought, the party shall not be prosecuted, tho' it be not strictly within the time limited. S. 15.

And the said entry and payment shall be registred by the proper officer, and a receipt given for the duty, of which receipt the officer shall keep an indented duplicate. S. 6.

Person dying before the end of the year.

3. Where a person shall die before the end of the year, the person claiming title to the coach, may use it, as the deceased might have done. S. 16.

4. All the said rates and duties, and all forfeitures and offences, shall be determined by the commissioners of excise (or of appeals, in case of appeal), within the limits of the chief office in London; and elsewhere, by two justices near; who shall, on complaint upon oath, summon the party, and on his appearance or contempt, may examine the fact, and on proof thereof, either by confession, or oath of one witness, give judgment, and issue warrants for levying penalties by distress and sale (if not redeemed in 14 days); which shall be employed (all necessary charges first deducted) half to the use of the king, and half to the informer: and for want of sufficient distress, they may imprison the party till satisfaction is made. S. 13, 14.

[But as these duties chiefly affect the nobility and persons of distinction, it had been better if the act had been more explicit with respect to the punishment; otherwise it may not be so safe for justices of the peace, upon such vague and general words, to imprison a peer of the realm, or distrain the goods of a member of parliament during their session. But if the justices will proceed, or shall be compelled by *mandamus*, or otherwise, so to do; they must remember withal, that by the 27 G. 2. c. 20. they may not order the distress to be detained more than 8 days, nor less than 4.]

5. Persons aggrieved by the determination of the justices, may appeal to the next quarter sessions. S. 13.

iv. Coffee, tea, and chocolate.

1. For all coffee imported, shall be paid at the custom house, in the whole, the sum of 3d. a pound. 10 G. c. 10. s. 48, 49.

And an inland duty, to be paid by the maker or seller, of 2s. a pound. *Id.* s. 4, 6.

Except coffee of the growth of the *British* plantations in *America*; which shall pay only 1s. 6d. a pound. 5 G. 2. c. 24. s. 1.

2. No tea shall be imported, but from the place of its growth; on pain of forfeiture. 11 G. c. 30. s. 8.

And by the 18 G. 2. c. 26. Over and above the customs on importation, there shall be paid on all tea, an inland duty of 1s. a pound, and 25 l. for every 100 l. of the gross price at which it shall be sold at the *East India* company's sales; which shall be paid in ready money by the proprietor to the collector, before it be taken out of the warehouse. S. 2.

In order to which, the commissioners may appoint officers to attend at the *East India* company's sales, and take an account of the names of the buyers and prices, and make report thereof to the commissioners; from whence the 25 l. *per cent.* shall be ascertained: and, to prevent mistakes, the said officers may inspect the company's books. 18 G. 2. c. 26. s. 6.

And every person declared the best bidder at such sale, shall within 3 days after, depose with the company or their clerk 40s. for every tub and chest of tea, on pain of six times the value, and

and such sale shall be void, and the same shall in 14 days after be put up again. S. 7.

Duty on cocoa
nuts and choco-
late.

3. No chocolate ready made, or cocoa paste, shall be imported, on pain of forfeiting the same, and double value; and also the bags, casks, and other package. 10 G. c. 10. f. 2.

For cocoa nuts imported, shall be paid at the custom house in the whole, 10 s. a hundred weight. 10 G. c. 10. f. 47, 49.

And if any person shall import any cocoa nut shells or husks, without the nuts, the officers of the customs, excise, or inland duties, may seize them, with the bags, boxes, and package; and after condemnation they shall be destroyed or otherwise disposed of, as the respective commissioners, or three of them shall appoint; and they may reward such officer in any sum not exceeding 20 s. a hundred weight. 4 G. 2. c. 14. f. 12.

For all chocolate made or sold in *Great Britain*, shall be paid by the maker or seller, 1 s. 6 d. a pound. 10 G. c. 10. f. 6.

Officers of excise
may go on board
and search.

4. The excise officers may go on board any ships, and search as the officers of the customs may do, for coffee, tea, cocoa nuts, chocolate, and cocoa paste, and seize all such as shall be forfeited, or shall be unshipt without entry and payment of duties, with the boxes, bags, and other package. 11 G. c. 30. f. 1.

Ships hovering
near the coast.

5. And where any vessel coming from foreign parts, and having 6 pounds or more of tea on board, shall be found at anchor, or hovering within two leagues of the shore, or be within the limits of any port, and not proceeding on her voyage, wind and weather permitting; all such tea, with the chests and other package, or the value thereof, shall be forfeited (whether bulk shall have been broken or not), and the same may be seized and prosecuted, or the value thereof sued for by the officers. 9 G. 2. c. 35. f. 22.

The said goods
to be ware-
housed.

6. Coffee, tea, and cocoa nuts imported, on entry at the custom house, and paying or securing the duties, shall be put into a warehouse, to be provided at the charge of the importer, and to be approved of by the commissioners of the customs. 10 G. c. 10. f. 26.

Penalty of not
entring and
warehousing.

7. And if any person shall import any coffee, tea, or cocoa nuts, without entry, and bringing the same into the warehouse, the same shall be deemed clandestinely run, and may be seized by any officer of the customs or inland duties; and the offender shall forfeit the same with the package, and the horses, carts, and carriages. 10 G. c. 10. f. 27.

Owner and offi-
cer to have each
a lock and key.

8. And the owner of the said goods, and the officer for the inland duties (who shall be appointed by the commissioners of the said duties) shall have each a lock and key; and the owner may in presence of the said officer, and of the warehouse keeper (to be appointed by the commissioners of the customs) view, garble, and sort the said goods, to make them merchantable, and receive them out in the manner hereafter mentioned. 10 G. c. 10. f. 26, 29, 30.

Taking out of
the warehouse
coffee and tea for
home consump-
tion.

9. That is to say, As to coffee and tea in the first place;—If they are intended to be taken out for home consumption, the proprietor, within the bills, shall make entry with the receiver or collector in *London*, of so much as he intends to take out of the warehouse,

warehouse, and pay down the duty; and elsewhere shall make entry at the next office, and pay the duties to the collector; and on producing a certificate signed by such collector or receiver (certifying that he has received the duty) to the warehouse keeper, he shall deliver out so much as is mentioned in the certificate; and shall deliver a permit to accompany such coffee or tea so delivered out, which shall also be signed by an officer attending the warehouse, to prevent the seizing thereof. 10 G. c. 10. f. 26.

10. And as to cocoa nuts, intended to be taken out of the warehouse, to be made into chocolate;—an entry thereof shall be made by the proprietor with the receiver or collector, as a charge on him and also on the buyer; who shall certify such entry to the warehouse keeper; and on such certificate, the quantity of cocoa nuts mentioned therein shall be delivered out with a permit signed by the officer at such warehouse, to be delivered to the officer where they are intended to be carried, that the same officer may take the same into stock. 10 G. c. 10. f. 26.

Taking out of the warehouse cocoa nuts to be made into chocolate.

11. And as to coffee, tea, and chocolate intended for exportation;—it shall be delivered out of the warehouse, on security given that it shall be exported, and not relanded; which security shall be discharged, on a certificate under the common seal of the chief magistrate in any place beyond the seas, or under the hands and seals of two known *British* merchants there, that the same were there landed, or on proof by credible persons that it was taken by enemies, or perished in the seas. 10 G. c. 10. f. 26.

Taking out of the warehouse coffee, tea, and chocolate, for exportation.

But by the 18 G. 2. c. 26. No drawback shall be allowed on tea exported. S. 5. Saving that it may be exported to *Ireland*, or the *British* plantations in *America*, without paying the inland duties before mentioned. 21 G. 2. c. 14.

12. And no seller or dealer shall receive out of the warehouse, less than one hundred weight of each sort at one time; except where the importation and delivering in shall be in less quantities, or where the same shall be sold in lots or parcels less than a hundred weight. 10 G. c. 10. f. 34.

What quantity shall be taken out at a time.

13. And the warehouse keeper and officer appointed by the commissioners of the inland duties shall each of them keep a book, wherein they shall enter an account of all coffee, tea, and cocoa nuts brought into and carried out of the warehouse, and the day and time when, and how much was delivered for home consumption, and how much for exportation, and the names of those for whom it was delivered out; and shall every six weeks, or oftner if required, transmit an account thereof in writing and on oath to the respective commissioners, with an account how much is remaining in the warehouse: Which said commissioners shall in one month appoint a person to inspect the books and warehouses, and examine the accounts; and if it shall appear that any was otherwise delivered out, or before payment of the duties on such coffee and tea as were sold for home consumption, or giving security for what was delivered for exportation, the warehouse keeper and officer respectively offending shall forfeit 100/. and be disabled to hold any publick office. 10 G. c. 10. f. 29.

Warehouse keeper and officer to keep an account.

Who shall be deemed a dealer in coffee, tea, and chocolate.

14. Every person who shall keep a publick house, shop, cellar, or other warehouse, for selling of brandy or other spirituous liquors, and shall have in his custody any coffee, tea, chocolate, or cocoa nuts above 6 pounds weight, shall be deemed a dealer in the said commodities. 11 G. c. 30. f. 4.

Licence for retailing.

15. No person shall be permitted to sell or retail any coffee, chocolate, sherbet, or tea, without licence first had by order of the general sessions of the peace in the respective counties (certificate being first shewed, that he hath given good security for payment of the duties to the king): or from the chief magistrate of the place in whose jurisdiction he shall inhabit. And no licence shall be granted to any retailer, till such security shall be given by recognizance or otherwise: For which licence, recognizance, and security, 12*d.* shall be given, and no more, for the payment of the excise. And persons selling without such licence and security, shall forfeit 5*l.* a month. 15 G. 2. c. 11. f. 15.

Houses of manufacturing and sale to be entred.

16. Every druggist, grocer, chandler, coffee-house keeper, chocolate-house keeper, and other person selling or dealing in coffee, tea, and cocoa nuts, or making or selling chocolate, either by wholesale or retail, shall before he take any the said goods into his possession make entry in writing of all storehouses, shops, rooms, and other places intended to be used by him, at the office for the division; on pain of forfeiting 200*l.* and the said goods found therein, with the canisters, bags, vessels, and other package. 10 G. c. 10. f. 10.

And no entry of any shop, warehouse, room, or utensil for carrying on any trades aforesaid, shall be deemed a legal entry, unless made in the name of the real owner of, and trader in such shop; and the person who acts as visible owner of such place, or principal manager in such trade, shall be deemed the real owner and trader, and consequently liable for any stock found there, or for not making entries, or other offences. 18 G. 2. c. 26. f. 8.

And none of the said goods shall be offered to sale but in places entred, or in a warehouse to be approved of by the commissioners; on pain of forfeiting the same and treble value, together with the canisters, bags, and other package. 10 G. c. 10. f. 14.

Notice of bringing in.

17. No coffee, tea, cocoa nuts, or chocolate shall be brought into any such shop or other place, without first giving notice thereof to the officer of the division, and leaving with him a certificate signed by the officer of the division from whence they were brought, that the duties on such coffee, tea, and chocolate have been paid, or that they have been condemned as forfeited; and in case of bringing in of cocoa nuts, that they have been entred with the officers of the customs, or were condemned as forfeited; and expressing the quantity and quality, and where the duties were paid, or at what port the customs and duties were paid for the cocoa nuts, or were condemned: on pain of forfeiting the same and treble value, with the canisters, bags, and other package. 10 G. c. 10. f. 11.

Permit when sold to the retailer.

18. And where any of them shall be sold in the said entred places, above the weight of 6*lb.* the officer shall, on request of the seller, give to the buyer a certificate signed by him, expressing the

the quantity, and the names of the buyer and seller, and that the duties have been paid, or that the cocoa nuts have been entred with the officers of the customs, or that they have been condemned as forfeited; which certificate shall be left with the officer of the division to which the same is intended to be carried, to prevent the seizing thereof. 10 G. c. 10. f. 15.

19. The officers shall be permitted at all times by day, to enter all warehouses, shops, and other places, and by weighing, gauging, or otherwise, to take an account of the quantity and sorts; in the weighing whereof the owner shall be assisting, and keep just weights and scales; on pain of 100*l*. 10 G. c. 10. f. 12.

20. And if any officer shall have cause to suspect, that any the said goods shall be concealed, if it is within the bills, then on oath made before two commissioners, or elsewhere, before one or more justices, setting forth the ground of his suspicion, they may by warrant authorize such officer by day or night, but if in the night then in presence of a constable, to enter the place suspected, and seize and carry away the same (if found) as forfeited, together with the bags, canisters, and other package; and if any person shall obstruct such officer, he shall forfeit 100*l*. 10 G. c. 10. f. 13.

Search for goods concealed.

And if any feller or dealer shall conceal any the said goods, he shall forfeit the same and treble value, with the canisters, bags, and other package: and if any person shall obstruct the officer in seizing any the said goods by virtue of this or any future act, or after seizure shall endeavour to rescue the same, or break or damage the vessels or package; he shall forfeit 50*l*. S. 39, 40.

And by the 11 G. c. 30. Two commissioners or any justice of the peace, on complaint by an officer on oath, that he suspects any dealer not to have made true entries, setting forth in such oath the causes of his suspicion, may summon such suspected person to appear with his books, and examine him on oath touching the truth of his entry; and if he shall refuse or neglect to appear, or to make such oath, he shall forfeit 20*l*. S. 12.

21. No person shall mix with coffee, to increase the weight, any butter, grease, water, or other materials; on pain of 100*l*. and if any dealer shall knowingly buy or sell any so mixed, he shall forfeit 100*l*. 11 G. c. 30. f. 9.

True manufacturing of coffee.

And the commissioners may appoint houses and proper materials for roasting of coffee berries, and officers to attend them, and one person at each house well skilled in roasting of coffee; to which all persons may resort to have their coffee berries roasted, bringing a certificate from an officer that the duties have been paid, or that it hath been condemned as forfeited; for the roasting of which coffee shall be paid 8*s*. a hundred weight. 10 G. c. 10. f. 31.

But the sellers and dealers may if they think proper, send their own roasters; who shall be permitted to roast the same, paying 3*s*. a hundred weight. 10 G. c. 10. f. 32.

And during the continuance of such roasting houses, no coffee berries shall be roasted, burned, or dried, but in one such house; on pain of forfeiting the same, and 5*s*. a pound. 10 G. c. 10. f. 33.

And if any officer or roaster shall neglect or refuse to attend such house, he shall forfeit 10*l*. for the first offence, and 20*l*. for the

the second, and be incapable to hold any office in the revenue. 10 G. c. 10. f. 34.

True manufac-
turing of tea.

22. No dealer in tea, or manufacturer, or dyer thereof, shall adulterate it, or alter, or manufacture it with any drug, or mix it with any leaf or other ingredient; on pain of forfeiting the same, and 100*l.* 11 G. c. 30. f. 5.

And by the 4 G. 2. c. 14. If any dealer in tea shall dye, or manufacture, any floe leaves, liquorice leaves, or the leaves of tea that have been used, or any other leaves in imitation of tea, or shall mix or colour such leaves of tea, with *terra japonica*, sugar, molosses, clay, logwood, or any other ingredients; or shall offer to sale, or have in his custody any such leaves in imitation of tea, or any such stained leaves of tea mixed with any ingredients; he shall forfeit for every pound weight thereof 10*l.* S. 11.

True manufac-
turing and
stamping of cho-
colate.

23. The maker of chocolate, if within the bills, shall weekly, and elsewhere every 6 weeks, make entry in writing at the next office, of all chocolate made by him within that time, setting forth the weight thereof, on pain of 50*l.* Which entry shall be upon oath of the maker or his chief workman, according to the best of his knowledge and belief, to be administered within the bills by such officers as the commissioners shall appoint, and elsewhere by the collectors and supervisors. But no person shall be obliged to go further to make entry, than the next market town. 10 G. c. 10. f. 17.

And he shall in one week within the bills, and elsewhere in 6 weeks after entry, clear off the duties, on pain of 50*l.* besides the duty; and he shall after default in payment, sell or deliver none out till the duty is paid, on pain of treble value. 10 G. c. 10. f. 18.

And he shall at the time of entry produce the same so made, tied with thread in papers of one pound each; which shall be marked or stamped by the officers. 10 G. c. 10. f. 19.

And if any person shall counterfeit the said stamp, or shall knowingly sell any chocolate with a counterfeit stamp; or shall, on chocolate, for which no entry hath been made, nor the duties paid, fix any paper with the stamp on: he shall forfeit 500*l.* and be committed to the next county gaol for 12 months. 10 G. c. 10. f. 22. 11 G. c. 30. f. 13.

And if any stamped chocolate shall be damaged, the owner may in presence of an officer open it, and deliver the stamps to the officer, and work it over again with fresh cocoa nuts, and have it restamped, paying duty for what is added. 11 G. c. 30. f. 14.

But on reworking chocolate, proof shall be made (before the commissioners within the bills, and before two justices elsewhere) that the duties for the cocoa nuts whereof it was made, and for those also which are added, have been paid, and the chocolate entred. 11 G. c. 30. f. 15.

Chocolate made
for private fa-
milies.

24. If any person shall be minded to make chocolate for his own family, and not for sale, and shall give notice thereof under his hand to the officer of the division, three days before he begin to make, in which notice shall be specified the quantity of cocoa nuts designed to be made into chocolate, the name of the person

to be employed in the making, and the place where; in such case the officer shall give a permission under his hand for making the same, and the place shall not be liable in respect thereof to be surveyed. 10 G. c. 10. f. 23.

And the person for whom it is made, shall in three days after finishing, make entry on oath with the officer, of the whole quantity then made by virtue of such permit, and bring the same wrapt up as before, to have it stamped; and shall pay the duty; and in default thereof, shall forfeit the same, and treble value. S. 24.

And no person shall be permitted to make into chocolate for his own private use, less than half a hundred weight of cocoa nuts at a time. S. 25.

25. And if any person shall offer any tea to sale, not having a permit; or if any pedlar or other trading person, going from town to town, or other mens houses, and trading either on foot, or with any horse or other cattle, or otherwise, shall offer any such tea to sale, altho' he have a permit; the person to whom it is offered to sale, may seize and detain the same, and carry it to the next warehouse belonging to the customs or excise, and bring the person before a justice of the peace to be by him committed to prison, and prosecuted for the penalties incurred for such offence; and such tea may be prosecuted in the name of the person who stopped or seized the same, in like manner as if it had been seized by an officer. 9 G. 2. c. 35. f. 20.

Penalty of re-tailing the same without a permit, or pedlars with one.

And none of the said goods above 6 pounds weight, shall be removed or carried from one part of the kingdom to another, without a permit signed by an officer, signifying the names and places of abode of the buyer and seller, and the quantity and species of the goods, and that the duty hath been paid, or the cocoa nuts entred as aforesaid, or that they have been condemned as forfeited; on pain of forfeiting the same, together with the canisters, bags, or other package: which permit shall be left with the officer of the division to which the same shall be carried, to prevent the seizure thereof; in which permit shall be expressed the time for which it shall continue in force. 10 G. c. 10. f. 16.

And if any person shall take out a permit for removing coffee, tea, or cocoa nuts, and shall not send away the goods within the time limited, nor return the permit, he shall forfeit treble value; and if there shall not appear a sufficient decrease made in the stock to answer the quantity in the permit, the officer may seize so much of the said stock as forfeited, as will answer the said quantity in the permit: But no person shall receive a permit, without the direction in writing of the person (or his servant) from whose stock the goods are to be removed; on pain of 50 l. and in default of payment, he shall be imprisoned 3 months. 11 G. c. 30. f. 10.

26. All sellers and dealers in any the said goods, and all makers of chocolate; and coffee or chocolate-house keepers; who shall consume the same in small quantities under six pounds, shall keep an account of all coffee, tea, chocolate, and cocoa nuts which they shall consume in each day; and every night enter in a book an account of the gross quantities retailed by them under six pounds; and shall keep another book, wherein they shall enter

Account to be kept of small quantities consumed.

each parcel above 6 pounds, which they shall sell in each day, which shall not be removed without a permit from the officer, expressing the quantity and quality, and the name of the seller and buyer, and where it is to be carried, and that the duties were paid, or the cocoa nuts entred, or that they were condemned as forfeited; which books shall be prepared by the commissioners, and by them delivered on demand to such sellers and dealers: and when the books shall be filled up, they shall be returned to the officer upon oath of the truth of the entries; and the said books shall from time to time lie open, and be perused by the officer: And if such seller or dealer shall omit his duty in regard to the said books, he shall forfeit 100*l.* 10 G. c. 10. f. 35.

But by the 12 G. c. 28. No dealer in cocoa nuts shall dispose of less than 28 pounds at a time, and then shall enter in writing the name and place of abode of the person to whom sold, and on demand shall produce such account to the officer; on pain of 20*l.* for each pound of cocoa nuts otherwise disposed of, and of 20*l.* for default about the entry. S. 29.

Power of the justices.

27. All the said penalties and forfeitures shall be recovered and mitigated as by the laws of excise or in the courts at *Westminster*; and be employed half to the use of the king, and half to the informer. 10 G. c. 10. f. 41. 11 G. c. 30. f. 39. 4 G. 2. c. 14. f. 10. 18 G. 2. c. 26. f. 14. 24 G. 2. c. 40. f. 33.

And by the 12 G. c. 28. the penalties on the said act shall be recovered as by the laws of the customs or excise respectively. S. 33.

Proof to lie on the claimer.

28. And on disputes whether the duties have been paid, the proof shall lie on the claimer, and not on the officer. 10 G. c. 10. f. 28.

Condemnation and sale.]

29. The commissioners shall cause all tea and coffee seized in *London*, and condemned, to be sold there; and if seized elsewhere, they shall cause it after condemnation to be brought and sold in *London*. 12 G. c. 28. f. 1. Or, after having been first valued by sworn valuers, they may be sold where the commissioners shall think proper. S. 16.

But if they think fit, they may cause such tea as cannot be sold for 5*s.* a pound, to be burnt or otherwise destroyed; and the person making seizure, to be rewarded as they shall think proper, not exceeding 1*s.* 6*d.* for each pound of such tea. S. 3.

Reward.

30. But no officer of the customs, or other person, shall be intitled to any reward for any seizure of the said goods, unless he give notice of the seizure to the next officer of excise, or supervisor, in 48 hours; who shall, on such notice, take an account of the species and quantity; nor shall such goods be removed without a permit from such officer of excise, on pain of re seizure. 12 G. c. 28. f. 6.

Utensils liable.

31. All stock and utensils found in the shops or other places aforesaid, shall be liable to the duties and forfeitures. 18 G. 2. c. 26. f. 8.

v. Glasf.

1. By the 19 G. 2. c. 12. Certain additional duties are laid upon glass imported, over and above what it shall pay by the 2 W. Sess. 2. c. 4. and by the book of rates of the 12 C. 2. which shall be under the management of the commissioners of the customs. S. 2, 8. Duty on importation.

2. Moreover, there shall be paid a duty of 9s. 4d. a hundred weight, upon all materials, metal, or other preparation for making of crown, plate, and flint glass, and all white glass; and of 2s. 4d. a hundred weight, upon all materials for making common bottles, and all other green glass: To be paid by the maker; and to be under the management of the commissioners of excise. S. 4, 5, 6, 9. Inland duty.

3. In order whereunto, every maker of glass shall first make entry in writing at the next excise office, of his name, and of all his furnaces, pots, pot chambers, warehouses, rooms, and other places for making or keeping of glass, or of materials for making it; and if he shall use the same, without first giving notice to the proper officer, he shall forfeit 50l. S. 10. Place of making to be entered.

4. And he shall, before he begin to fill any pot, give 12 hours notice in writing to the officer, of the time and hour when he intends to begin, with an account of the weight of the materials, and the species of glass to be made; on pain of 50l. S. 11. Notice of beginning to work.

And if the filling be not begun pursuant to such notice, the said notice shall be void. S. 12.

5. The officers shall be permitted at all times, by day or night, to enter into the workhouse, warehouse, or other place for making of glass; and to weigh and take account of the quantity of materials; and shall make report thereof to the commissioners or whom they shall appoint, leaving a copy (if demanded) under his hand, for the glass maker; and if he shall not leave such copy on demand, he shall forfeit 40s. S. 13. Officer to enter and survey.

And if any person shall obstruct any officer in the execution of his duty on this act, he shall forfeit 50l. S. 16.

6. And the maker shall keep scales and weights at the place where the glass is made, and assist the officer in weighing; on pain of 50l. S. 14. Maker to keep scales and weights.

7. Every maker within the bills shall monthly, and elsewhere once in 6 weeks, make entry in writing at the next excise office, of the quantities of the materials used in each making, on pain of 20l. which entries shall be made on oath before the commissioners within the bills, and elsewhere before the collector or supervisor. S. 17. Entry of glass made.

But no maker shall be obliged to go further than the market town where it is made, or the next market town, for the making such entries. S. 18.

8. The maker, within the bills, shall in 4 weeks, and elsewhere in 6 weeks after entry, pay off the duties; on pain of double duty. S. 19. Payment of the duty.

Allowance for
glafs spoiled in
making.

9. If any pot filled with materials shall crack or break, where-
by any part thereof shall become unfit for service, on proof there-
of to the commissioners where such glafs house shall be situated,
they shall make an allowance for the same. S. 15.

Exportation.

10. Any person who hath paid the duty, may export the glafs;
and have the duty drawn back; and if it shall be relanded, it shall
be forfeited, or the value thereof, over and above the penalty of
the bond given on exportation. S. 20, 21, 22.

And no glafs shall be imported into *Ireland*, other than the ma-
nufacture of *Great Britain*; on pain of forfeiting the same, and
the ship, and 10s. a pound. S. 23.

Power of the
justices.

The like penalty for exporting glafs out of *Ireland*. S. 24.

11. The penalties to be recovered or mitigated as by the laws
of excise, or in the courts at *Westminster*; and to be employed,
half to the use of the king, and half to him that shall sue. S. 39.

vi. Hops.

Duty on hops
imported.

1. By the 9 *An. c. 12.* an additional duty of 3d. a pound is
laid on hops imported, over and above all other duties; which
shall be under the management of the officers of the customs.
S. 1, 2, 3, 4.

And if any foreign hops shall be landed before entry and duty
paid, or without warrant for landing; the same shall be forfeited,
and burnt in ten days after condemnation, and the ship also shall
be forfeited, and the person concerned in importing, or aiding in
putting them on shore, shall forfeit 5l. a hundred weight. 7 G. 2.
c. 19. s. 1.

Duty on hops
grown in Great
Britain.

2. And by the said act of the 9 *An. c. 12.* there shall be paid
a duty of 1d. for every pound of hops grown in *Great Britain*,
cured and made fit for use; the same to be paid by the owner,
within 6 months after they shall be cured and put into bags;
which duty shall be under the management of the commissioners
and officers of excise. S. 1, 5.

Hop grounds to
be entred.

3. In order whereunto, every person who shall plant or have
growing any hops, for sale or not for sale, shall yearly on or be-
fore Aug. 1. give or send notice in writing under his hand, at the
next office of excise, or to the officer of the district, of all the
hop grounds in his possession, and of the name of the parish,
township, or place, and the name of the owner or occupier; on
pain of 40s. an acre. 9 *An. c. 12. s. 6.*

But such person shall not be obliged, for giving notice, to go
further than the next market town. S. 7.

And the officer who shall receive the notice, shall in five days
enter the same in a book to be kept at the office for that purpose;
on pain of 40s. S. 7.

Places of curing
and keeping to
be entred.

4. Also no person shall use any oust, storehouse, or other place,
or any kiln for curing or keeping of hops, unless notice thereof
shall have been given, on pain of 50l. 9 *An. c. 12. s. 8.*

And all hops shall in 6 weeks after gathering, be brought to be
cured and bagged at such ousts or places notified, and no other
on pain of 5s. a pound. S. 9.

5. The officer shall at all times, by day or night, and if in the night in the presence of a constable, be permitted on his request to enter into the oust, storehouse, or other place, used by any person for growing, curing, or keeping of hops; and if the planter or owner shall obstruct him, he shall forfeit 20*l.* 9 *An.*

Officer to enter and survey.

c. 12. s. 15.

6. The owners of hops, before they respectively begin to bag or weigh their hops, shall send notices in writing under their hands to the next excise office or officer, of the day and hour when they intend to begin either to bag or to weigh; which notice, as to such as shall be bagged or weighed the first week, shall be given in 24 hours before; and as to every other bagging or weighing, 48 hours; on pain of 50*l.* 6 G. c. 21. s. 25.

Notice of bagging and weighing.

7. And the excise officer shall attend at the bagging of every parcel of hops, and at the weighing thereof, and shall cause the weight (the tare of the bag being abated) to be marked on every bag; and shall cause an entry of the said weight to be made in his book; and shall make return thereof in writing to the commissioners or whom they shall appoint, leaving a true copy (if demanded) of such return under his hand with the planter or owner; and if he shall neglect or refuse to leave such copy (after demand in writing, 12 G. c. 28. s. 30.) he shall forfeit 5*l.* 9 *An.* c. 12. s. 11.

Officer to attend at the bagging and weighing.

And the allowance shall be made after the rate of ten pounds *per centum*, upon the weight of every bag, for the tare thereof. S. 13.

8. The owners shall keep at their ousts, storehouses, and places of keeping their hops, weights and scales; and permit the officer to use them; and shall not suffer any false weights to be used; on pain of 20*l.* 6 G. c. 21. s. 26.

Owner to keep scales and weights.

9. The owners may, if they think fit, put the hops into casks instead of bags; giving the like notice, and being subject to the same regulations, for casking as for bagging. 6 G. c. 21. s. 27, 28.

Hops may be put into casks instead of bags.

And the officer shall cause the cask to be weighed, and the weight to be marked on the cask, and also the weight of the hops therein. S. 28.

10. No person shall take any hops of foreign growth out of the bags in which they are imported, and rebag the same in *British* bagging, in order to sell or export them as *British* hops; on pain of 10*l.* a hundred weight: And if any person shall endeavour to defraud the king of the duty, by using twice or oftner the same bag, with the officer's mark thereupon; he shall forfeit 40*l.* 9 *An.* c. 12. s. 23.

Deceit in bagging.

11. No planter or owner shall (on pain of 50*l.*) remove from his oust, storehouse, or other place, any hops, until they have been cured, bagged, and weighed, and the duties ascertained; unless where the officer, after notice, shall not attend the bagging and weighing. 9 *An.* c. 12. s. 16.

Removal before bagging.

12. If any planter or owner shall conceal any hops, to avoid the duties; he shall forfeit 20*l.* and the hops concealed. 9 *An.* c. 12. s. 17.

Concealing.

Privately conveying.

13. And if any gatherer of hops, or other person, shall privately convey any hops from the place of growing, or where they shall be put in order to be cured, bagged, and weighed, with intent to defraud the king and the owner; he shall forfeit 5 s. a pound. 9 *An. c. 12. f. 18.*

Payment of the duties.

14. The planter or owner shall in 6 months after the hops shall be cured, bagged, or weighed, pay off the duties; on pain of double duty. 9 *An. c. 12. f. 14.*

Adulterating hops.

15. If any person shall mix with hops any drug or ingredient to alter the colour or scent; he shall forfeit 5 l. a hundred weight. 7 *G. 2. c. 19. f. 2.*

Using other things instead of hops.

16. No common brewer, innkeeper, or victualler shall use any broom, wormwood, or any other bitter ingredient, to serve instead of hops; on pain of 20 l. (Except the infusing of broom or wormwood into beer or ale by the retailer, after it is brewed and tunned, to make it broom or wormwood ale or beer.) 9 *An. c. 12. f. 24.*

Exportation.

17. Hops which have paid the duty, may be exported to *Ireland*. 9 *An. c. 12. f. 21.*

But there shall be no drawback of the duties. 6 *G. c. 11. f. 40.*

And no foreign hops, other than of *British* growth, shall be landed in *Ireland*. 7 *G. 2. c. 19. f. 2.*

Penalties how to be recovered.

18. The penalties aforesaid shall be recovered and mitigated as by the laws of excise, and distributed half to the king, and half to him that shall sue. 9 *An. c. 12. f. 26.* 24 *G. 2. c. 40. f. 33.*

Hops liable to distress for the duties and penalties.

19. And all hops in the custody of any planter or owner, or person in trust for him, shall be liable to the duties in arrear, and to the penalties; in the same manner as if the debtor or offender were the lawful owner. 9 *An. c. 12. f. 19.*

Cutting hop binds.

20. If any person shall unlawfully and maliciously cut any hop binds growing on poles, in any plantation of hops; he shall be guilty of felony without benefit of clergy. 6 *G. 2. c. 37. f. 5, 6.*

Which offence is treated of more at large in the title *Black act*.

vii. Leather.

Duty on leather imported.

1. By the 4 *W. c. 5.* and 9 *An. c. 11.* and 10 *An. c. 26.* certain additional duties are laid on all hides, skins, vellum, and parchment imported, over and above what they are charged in the book of rates: which shall be under the management of the commissioners of the customs.

And after the duty shall be paid on importation, the officers of the customs shall cause every hide or skin to be marked, to denote the payment of the duty. 9 *An. c. 11. f. 6.*

Duty on leather dressed in Great Britain.

2. And by the said acts of 9 *An. c. 11.* and 10 *An. c. 26.* certain duties are imposed on hides and skins, tanned, tawed, or dressed in *Great Britain*; and on vellum and parchment made in *Great Britain*; as follows:

On all tanned hides 1 *d.* $\frac{1}{2}$ a pound.

Calf, kips, hogs, and dog skins tanned 1 *d.* $\frac{1}{2}$ a pound.

Goat skins tanned with shomack, or otherwise, to resemble *Spanish* leather, 4 *d.* a pound.

Sheep skins tanned for roans after the nature of *Spanish* leather, 2 *d.* a pound.

Sheep skins and lamb skins tanned for glovers and bazils 1 *d.* $\frac{1}{2}$ a pound.

Tanned skins not before charged 30 *l.* in the hundred, according to the real value.

All the above to be paid by the tanner.

Horse hides dressed in allom and salt or meal, or otherwise tawed, 1 *s.* 6 *d.* a hide.

Hides of steers, cows, and all other (except horse hides) dressed in allom and salt, or meal, or otherwise tawed, 3 *s.* a hide.

Calves skins and kips dressed in allom and salt or meal, or otherwise tawed, 1 $\frac{1}{2}$ a pound.

Slinks so dressed or tawed, with the hair on, 3 *s.* a dozen.

Slinks so dressed or tawed, without hair, 1 *s.* a dozen.

Dog skins so dressed or tawed, 1 *s.* a dozen.

Buck and doe skins (except what paid the duty on importation) dressed in allom and salt or meal, or otherwise tawed, 6 *d.* a pound.

Kid skins so dressed or tawed (except what paid the duty on importation) 1 *s.* a dozen.

Goat skins so dressed or tawed, 2 *s.* a dozen.

Beaver skins so tawed, 2 *s.* a dozen.

Sheep skins and lamb skins so dressed or tawed, 1 *d.* $\frac{1}{4}$ a pound, and no more, altho' they may have been dipped or steeped in the tanner's wooze made of bark or shomack before such dressing (3 *G. c. 4. s. 13.*)

All other tawed skins not before charged, 30 *l.* for every 100 *l.* value.

To be paid by the tawers or makers.

For hides and skins dressed in oil, 6 *d.* a pound.

Deer, goat, and beavers skins, dressed in oil, 6 *d.* a pound.

Calves skins dressed in oil, 8 *d.* a pound.

Sheep and lamb skins dressed in oil, 3 *d.* a pound.

All skins dressed in oil, not before charged, 15 *l.* in the hundred, according to the real value.

To be paid by the oil leather dressers.

For all vellum made in *Great Britain*, 3 *s.* a dozen.

Parchment made in *Great Britain*, 1 *s.* 6 *d.* a dozen.

But such small pieces as have been commonly called pates and tails, and are tanned after they are cut off from the hides; shall not be charged with the duty by weight, but with the duty *ad valorem*; and the same need not to be marked as is hereafter directed. 9 *An. c. 11. s. 46.*

3. By *tanned* hides or skins, or pieces thereof, are meant only What is meant by hides tanned, such as are tanned in wooze made of the bark of trees or shomack; dressed in oil, and tawed.

mack; and by hides and skins *dressed in oil*, are meant such as are made into leather in oil, or with any materials whereof the chiefest ingredient shall be oil; and by *tawed* hides or skins, are meant such as are dressed or made into leather in allom and salt, or meal, or other ingredients properly used by the tawers of white leather.

9 *An. c. 11. f. 3.*

Who shall be deemed tawers or dressers.

4. Collar makers, glovers, bridle cutters, and others who dress skins or hides, or pieces thereof, in oil, allom and salt, or meal, or other ingredients, and who cut and make the same into wares, shall be accounted tawers or dressers. 9 *An. c. 11. f. 28.*

Duty ad valorem how to be ascertained.

5. The value of the said hides and skins which are to pay *ad valorem*, shall be as they are worth to be sold at the next market, without respect to the duty; and the collector shall receive the duties, on the oath of such tanner, tawer, or dresser. 9 *An. c. 11. f. 14.*

No leather to be twice charged.

6. Any hide or skin which hath once paid the duty, shall not be charged under any other denomination. 9 *An. c. 11. f. 3.*

Officers for these duties.

7. The commissioners of the treasury shall appoint commissioners of these duties; who shall have the same power as the commissioners of the excise. 9 *An. c. 11. f. 13, 38.*

Places of working to be entred.

8. Tanners, tawers, curriers, or dressers of hides or skins, and makers of vellum or parchment, shall give notice in writing to the officer, of their names and places of abode, and of their tan-houses, yards, workhouses, mills, or other places, where they intend to tan, taw, or dress hides or skins, or make vellum or parchment, before they use the same; on pain of 50*l.* 9 *An. c. 11. f. 15.*

And if any person shall not make such entry, or shall use any private tan yard, workhouse, pit, fat, mill, or place, he shall forfeit 20*l.* and the goods found in such private tan yard or place not entred, or the value thereof, shall also be forfeited. 9 *An. c. 11. f. 17.*

Officers to enter and survey.

9. The officers at all seasonable times, in the day time, may enter into any tan yard, workhouse, warehouse, mill, or other place; and if the owner or occupier shall refuse him entrance, he shall forfeit 10*l.* 9 *An. c. 11. f. 17.*

Notice of removing to the place of drying.

10. The said tanners and others shall give notice to the officer, of their places for drying and keeping of hides or skins, vellum or parchment; and they shall give 2 days notice in writing to the officer, before they take the said goods out of the mill, wooze, liquor, oil, or other materials, in order to be dried; and they shall permit the officers to take an account; and shall in two days after the taking out of the wooze, mill, liquor, or other materials, and before the carrying away of the said goods from the place of drying, make entry with the officer of the number and quality, and verify the same on oath, to be administered by any justice of the peace, or collector or supervisor; and they shall not remove any of the said goods, from the place of drying, until the duty be first charged, entred, and marked. 9 *An. c. 11. f. 16.*

And if any person shall not send such notice of taking the goods out of the wooze or other materials, or not make due entries, or remove any the said goods contrary to this act; he shall forfeit

feit 20*l.* and also such goods unlawfully removed, or the value thereof shall be forfeited. S. 17.

11. And if any tanner or other such person shall conceal any hide or skin, vellum or parchment, or any part thereof; he shall forfeit 20*l.* and also the goods concealed, or the value thereof.

9 *An. c. 11. f. 17.*

12. Tanners, and other the said persons, shall keep scales and weights; and sworn officers shall be appointed, for the weighing and other matters to be performed at every such yard or dressing place. 9 *An. c. 11. f. 18.*

And if he shall not keep just scales and weights, or shall not permit his hides or skins to be weighed, or neglect or refuse to bring the scales, or to assist at the weighing; he shall forfeit 50*l.* S. 26.

13. Tanners, and other the said persons, shall before any the said goods be removed from the place of dressing, drying, or keeping, give two days notice in writing to the officer (for giving of which notice he shall not be obliged to go further than the next market town); and shall permit the officer to weigh the goods chargeable by weight, and bring the scales, and assist in weighing; and shall permit the officer to take an account of the number and quality of the goods to be charged by tale; and shall ascertain the value of such goods as are to be charged *ad valorem*, by his oath to be taken before the said officer, or a justice of the peace.

9 *An. c. 11. f. 19.*

14. And after the duties are ascertained by weight, tale, or value respectively, the officer shall enter the same in a book, and make return thereof to the commissioners or whom they shall appoint, leaving a true copy thereof under his hand, with such tanner or other person. 9 *An. c. 11. f. 20.*

15. Immediately after the duty shall be ascertained, and entry thereof made, the officer shall cause every hide or skin, and every piece of a hide or skin, and all vellum and parchment, to be marked.

16. And if such tanner or other person shall desire the mark to be made, on any particular part of the hide or skin; the officer shall mark it accordingly. 9 *An. c. 11. f. 22.*

17. And if any tanner, or other such person, shall remove from his yard or drying place any the said goods, before the duties shall be charged, and before they be marked; or if any buyer shall carry away the same before they be marked; he shall forfeit 50*l.* and the said goods so unlawfully sold or removed, shall also be forfeited. 9 *An. c. 11. f. 26.*

18. And if any person shall counterfeit the stamp, or knowingly sell any the said goods with a counterfeit stamp; he shall be guilty of felony without benefit of clergy. 9 *An. c. 11.*

f. 44.

19. And to prevent frauds between the officers and tradesmen, all tanners, tawers, and dressers of hides, skins, vellum, and parchment, shall keep those which have not been stamped, from those which have, and also those which have been last stamped, from those which have been stamped before, for 24 hours within the

Concealing to avoid the duty.

Tanners to keep scales and weights.

Duty to be ascertained before removal.

Charge by the officer.

Leather to be marked.

In what part to be marked.

Removing before marked.

Counterfeiting the stamp.

Leather stamped to be kept separate.

the bills, and for 2 days elsewhere; unless they shall have sooner been weighed and taken account of by the surveyor or supervisor: on pain of 10*l.* 5 *G. c. 2. f. 10.*

Payment of the duties.

20. Persons within the bills of mortality shall pay off the duties in 14 days to the commissioners, and elsewhere in six weeks to the collectors, after the said goods shall be marked. 9 *An. c. 11. f. 23.*

But no person shall be obliged, for payment of the duties, to go farther than the next market town. *S. 24.*

And persons not paying as aforesaid shall forfeit double duty; and shall not deliver out any the said goods until the duty be paid, on pain of double value. *S. 25.*

Tanners to balance accounts with the officers.

21. Every tanner, and other such person, shall once in 3 months (if demanded) make an account with the officer, of the goods taken out of the wooze or other ingredients, and of his entries thereof, and balance the said account by the goods which have been charged, and those which are in his possession unmarked and uncharged; on pain of 50*l.* 9 *An. c. 11. f. 27.*

Exportation.

22. On exportation of hides or skins, tanned, tawed, or dressed, and marked, and of boots, shoes, gloves, or other manufactures made of leather, chargeable for the duty by weight; a drawback shall be allowed of two thirds of the duty. 9 *An. c. 11. f. 39.* 12 *An. ft. 2. c. 9. f. 65.*

Except that for tanned leather manufactured into boots, shoes, gloves, and other wares; a drawback of 1*d.* $\frac{1}{2}$ for a pound weight, shall be allowed in lieu of the said two thirds of the duty. 12 *An. ft. 2. c. 9. f. 64.*

Penalties how recoverable.

23. Any two justices residing near, may hear and determine offences; who shall on information or complaint in 3 months after seizure made, or offence committed, summon the party accused, and the witnesses, and on appearance or contempt of the party (on proof of notice given) shall examine witnesses on oath, and give judgment, and issue warrants for levying the pecuniary penalties by distress, and sale (if not redeemed in 6 days). 9 *An. c. 11. f. 36.*

Mitigation.

24. And they may mitigate the penalties, the charges of the officers being always allowed over and above the mitigation; and so as the mitigation do not reduce the penalties to less than one fourth part, over and above the charges. 9 *An. c. 11. f. 37.*

Appeal.

25. Persons aggrieved may appeal to the next sessions, who may determine the same, and issue warrants for levying the penalties. 9 *An. c. 11. f. 36.*

Certiorari.

26. And no *certiorari* shall be allowed. 9 *An. c. 11. f. 47.*

viii. Linen cloth, and silks.

Duty on importation.

1. By the 10 *An. c. 19.* and the 12 *An. ft. 1. c. 9.* There shall be paid for all chequered and striped linens, and upon all linens printed, painted, stained, or dyed, after the manufacture, or in the thread or yarn, in any foreign parts, which shall be imported, and may lawfully be worn, over and above other duties, 30*l.* for every

every 100*l.* value ; which shall be under the management of the commissioners of the customs.

Except lawns, striped or chequered linens, being all white, and neckcloths striped at the end only, and also barras, or packing canvas, and buckrams. 12 *An. ft. 2. c. 9. f. 5.* 12 *An. ft. 2. c. 19.*

And after the duty is paid, the said printed linens imported shall be stamped by the officers of the customs. 10 *An. c. 19. f. 68.*

2. By the 10 *An. c. 19.* and the 12 *An. ft. 2. c. 9.* Over and Home duties. above the duties payable on importation of any of them, there shall be paid, for all *silks* printed, stained, or painted in *Great Britain* (Silk handkerchiefs excepted) 12 *d.* a yard in length, reckoning half a yard for the breadth.

And for all *silks handkerchiefs* so printed, stained, or painted in *Great Britain*, 4 *d.* a yard square.

And for all *callicoes* printed, stained, painted, or dyed in *Great Britain*, 6 *d.* for every yard in length, reckoning one yard wide, or within one eighth thereof.

And for all *linen* stuffs printed, stained, painted, or dyed in *Great Britain*, 3 *d.* a yard in length, reckoning yard wide.

Except such callicoes, linens, and fustians as shall be dyed throughout of one colour only, and stuffs made of woollen, or whereof the greatest part in value shall be woollen.

3. But it is to be observed, that such painted or stained callicoes cannot be of use for wearing apparel, and therefore the printing or staining of them must be chiefly in order for exportation ; for by the 7 *G. ft. 1. c. 7.* it is enacted, that no person shall use or wear in any apparel, any printed, painted, stained, or dyed callico ; on pain of 5 *l.* to the informer, on conviction on the oath of one witness before one justice ; who shall, on information on oath in 6 days after the offence, summon the party, and upon his appearance or contempt examine the matter, and on proof by confession or oath of one witness determine the same, and on conviction cause the penalty to be levied by distress and sale, rendering the overplus (charges of distress and sale being first deducted) : Provided that persons aggrieved may appeal to the next quarter sessions, giving 6 days notice. S. 1. Observation as to callicoes.

And if any person shall offer the same to sale, or any household furniture made up of, or mixed therewith, unless for exportation ; he shall forfeit 20 *l.* half to the informer, and half to the poor of the parish or place where the offence shall be committed, to be recovered in the courts at *Westminster*, with full costs, on prosecution in 6 months ; and if he is a steward or other officer of a corporation, he shall also forfeit his office. S. 2, 4.

And no person shall use the same in any household furniture, on like pain of 20 *l.* S. 3.

But this shall not extend to callicoes made up in household furniture before *Dec. 25. 1722.* S. 6.

Nor to callicoes dyed all blue. S. 11.

Nor to prohibit wearing, or using in household furniture, any stuff made of cotton, or mixed therewith, printed or painted ; or any callico chequered or striped ; or any callico stitched or flowered

flowered in foreign parts with any colour (muffins, neckcloths, and fustians excepted). S. 10.

Houses to be entered.

4. Every such printer, painter, stainer, or dyer, shall give notice in writing at the next office, of his name and place of abode, and where he intends to work; on pain of 30*l.* 10 *An. c. 19. f. 71.*

And by the 1 *G. 2. c. 36.* Where any person shall take up on him, to print, paint, stain, or dye any silks, linens, or stuffs at any other place than the place of his usual residence or exercise of his trade; he shall first make entry with the officer of the division, where he intends to do the same, and pay down the duties, on pain of 50*l.* and also the said goods shall be seized and forfeited. S. 21.

Officer to enter and take account.

5. The officers shall at all times by day or night, and if by night in presence of a constable, be permitted on request to enter such person's house, workhouse, drying place, warehouse, field, or other place used by him, and take an account, and shall make thereof a report in writing to the commissioners or whom they shall appoint, leaving a copy if demanded, under his hand; and if he shall make default in leaving such copy (after demand in writing, 12 *G. c. 28. f. 30.*), he shall forfeit 40*s.* 10 *An. c. 19. f. 75.*

Obstructing the officer.

6. And none of the said persons shall obstruct the officer in execution of his duty; on pain of 20*l.* 10 *An. c. 19. f. 78.*

Entry of goods made.

7. Every such printer, and other person, shall once in 6 weeks make entry in writing at the next office, on oath before the collector or supervisor, of all such goods by them made, containing the kinds and quantity, and the names and places of abode of the owners (if they are not their own); on pain of 50*l.* 10 *An. c. 19. f. 72.*

But no person shall be obliged to go to make entry, further than the next market town. 10 *An. c. 19. f. 73.*

Officer may charge for goods missing.

8. If the officer shall miss any quantity of the said goods, whereof he had taken an account at his last survey, and shall not on reasonable demand receive satisfaction what is become of the same; the officer may charge such person with the duties of the goods so missing, as if they were printed, painted, stained, or dyed. 10 *An. c. 19. f. 77.*

Goods concealed.

9. And if they shall conceal any the said goods, to avoid the duty; they shall forfeit 20*l.* And all the silks, callicoos, linens, and stuffs found in any private workhouse, or other place whereof no notice hath been given, or the value thereof, shall be forfeited. 10 *An. c. 19. f. 82.*

Payment of the duties.

10. They shall, within six weeks after entry, clear off the duties; on pain of forfeiting double: and if they shall deliver out any such goods, after default in payment of the duties, before the same shall be cleared off, they shall forfeit double value of the goods. 10 *An. c. 19. f. 74.*

Removing before stamped.

11. And they shall not remove any the said goods, till the officer hath taken account thereof, and until each piece be stamped or marked; on pain of 20*l.* And the same so carried away without being marked, and found in the possession of any draper or

or other person for his use, for sale, may be seized, or the value thereof recovered. 10 *An. c. 19. f. 79.*

12. And they shall keep the goods which have not been surveyed, separate from the goods which have been surveyed; on pain of 5 *l.* 10 *An. c. 19. f. 81.* Goods surveyed to be kept separate.

13. And on oath by any credible person, that he hath reason to suspect, that any the said goods are in the possession of any draper or other person dealing therein, or of any other to his use, for sale, unstamped; the commissioners within the bills, or any two justices elsewhere, may issue their warrants, requiring some officer of the said duties (with a constable) in the day time to search for the same, and to open doors, chests, trunks, and package, and to seize such goods, and bring them to the next office. 10 *An. c. 19. f. 98.* Search for goods unstamped.

14. And if any the said goods shall be found in any place, on land or water (except on shipboard for exportation) without being marked with a stamp or seal, denoting that the duties have been paid or charged; the same shall be forfeited, and may be seized by any officer of the customs or excise, and the person in whose custody they are found shall forfeit 50 *l.* 5 *G. c. 11. f. 15.* Goods found unstamped may be seized.

15. And if any person shall counterfeit the stamp, he shall be guilty of felony without benefit of clergy. 10 *An. c. 19. f. 97.* Counterfeiting the stamps.

And if any person shall knowingly sell any the said goods with a counterfeit stamp, he shall forfeit 100 *l.* and be set in the pillory in some publick place two hours. *Id.*

16. The said goods having paid the duty, may be exported; and there shall be a drawback of the duties. 10 *An. c. 19. f. 94, 95, 96.* 12 *An. st. 2. c. 9. f. 15.* Exportation.

17. The penalties (except as is abovementioned in relation to callicoës) may be sued for, levied, and mitigated as by the laws of excise, or in the courts at *Westminster*; and shall be employed half to the use of the king, and half to him that shall discover, inform, or sue. 10 *An. c. 19. f. 92.* 24 *G. 2. c. 40. f. 33.* Power of the justices.

18. And all the utensils and instruments for printing, painting, staining, or dying such goods, in custody of any the said persons, or any other to his use, shall be liable to all arrears of the duty, and to all penalties concerning the same, in like manner as if such person were the lawful owner. 10 *An. c. 19. f. 83.* Utensils liable.

ix. Malt.

1. By the 12 *An. st. 1. c. 2.* No malt shall be imported, on pain of forfeiting the same, and the value thereof. 8. 26. No malt to be imported.

And by the yearly acts, if it is brought in from *Scotland* by sea, it shall be entred at the port of landing, and pay the like duty as *English* malt, unless a certificate is produced that it hath paid the duty of 3 *d.* a bushel in *Scotland*, and then it shall only pay 3 *d.* more, to make it equal with the *English*; and if it is brought by land, it shall be carried thro' *Berwick* or *Carlisle*, and there pay in like manner; on pain of forfeiting the same or the value thereof; and if it is carried beyond *Berwick* or *Carlisle*, without entry

entry or payment, the officers of excise may seize the same. 26 G. 2. c. 1. f. 10.

Duty on malt.

2. By the 12 An. ft. 1. c. 2. (which is continued yearly) there shall be paid by the maker for all malt made in *England* (except it be made for exportation only, 12 G. c. 4. f. 48.) a duty of 6d. a bushel. S. 1.

What shall be deemed a bushel.

3. And every round bushel with a plain bottom, 18 $\frac{1}{2}$ inches wide throughout, and 8 inches deep, shall be deemed a legal *Winchester* bushel. 12 An. ft. 1. c. 2. f. 7.

Officers for these duties.

4. The said duty shall be under the management of the commissioners and officers of excise. 12 An. ft. 1. c. 2. f. 3.

Places of making to be entered.

5. No person making malt (other than compounders) shall set up, alter, or use any cistern, uting fat, utensil, or other vessel, for the wetting or steeping barley or other corn, or any kiln, floor, room, or other place for making or keeping of malt, without first giving notice in writing at the next office of excise; or shall keep or use any private cistern or other vessel for the wetting his barley or corn, other than such as are known and made use of in his common malting house, on pain of 50 l. 12 An. ft. 1. c. 2. f. 36.

Officer to enter and survey.

6. The officer shall in the day time be permitted, on request, to enter the house, malt house, and all other places belonging to or used by any maker of malt (*either for sale or not for sale*); and to gage all cisterns, uting fats, and other vessels used for wetting or steeping corn, and take account of the quantity; and shall thereof make return to the commissioners, or whom they shall appoint, leaving a copy with such maltster: and if any such maltster shall refuse to permit such officer, he shall forfeit 20 l. 12 An. ft. 1. c. 2. f. 4.

Or if he shall refuse or neglect (after demand in writing, 12 G. c. 28. f. 30.) to leave a copy of the gage for the maker, at the time of taking the gage; he shall forfeit 40 s. S. 31.

And by another clause in the said act, the officer shall on request be permitted, by night or by day, but if in the night then in presence of a constable, to enter the house, malt house, and other place belonging to or made use of by any maker of malt *for sale*, common brewer, innkeeper, victualler, distiller, or vinegar maker making malt, to gage and take an account of the corn wetting and wetted; and if such maker shall refuse to permit him, he shall forfeit 20 l. S. 34.

Obstructing the officer.

7. And by a general clause in the 1 G. ft. 2. c. 2. If any maker of malt for sale, shall obstruct any officer of excise, in the execution of any of the powers given him for securing the said duties, he shall forfeit 10 l. S. 4.

Manner of gaging.

8. The Officers shall measure corn making into malt, by the gage only, and not by the bushel. 12 An. ft. 1. c. 2. f. 17.

Time for making.

9. No person shall make any barley malt (except in *June, July, and August*) but that the same shall have in making thereof, that is, in the fat, floor, steeping, and drying three weeks at least; nor in *June, July, and August*, but that it shall have 17 days at the least (unless it be for his own house): on pain of forfeiting for every quarter 2 s. half to the king, and half to him that

that shall sue : And the justices in sessions, and the steward in the leet, may hear and determine the same, as well by presentment of 12 men, as by accusation or information of two honest witnesses.

2 & 3 Ed. 6. c. 10. f. 2, 3, 4, 5.

10. If any person shall put to sale any malt not well trodden, rubbed, and fanned, whereby there may be conveniently fanned out of one quarter half a peck of dust or more ; he shall forfeit for every quarter 20*d.* half to the king, and half to him that shall sue in like manner in the Sessions or leet. 2 & 3 Ed. 6. c. 10. f. 3, 4.

Dressing of malt.

11. No person (except it be for his own house) shall mingle any malt, not well made, or made of mow-burnt, or spired barley, with other good malt, and after put the same to sale ; on pain to forfeit for every quarter 2*s.* half to the king, and half to him that shall sue in like manner in the sessions or leet. 2 & 3 Ed. 6. c. 10. f. 3, 4, 5.

Mixing bad malt with good.

And the bailiffs and constables of the town where malt shall be made, or put to sale, may search the same : and if they shall find it to be evil made, or mingled with evil malt, they shall with the advice of one justice cause it to be sold to such persons, and at such reasonable prices, and under the common price of the market, as to him shall seem necessary and expedient. f. 4.

12. If any maltster (other than compounders) shall force together in the cistern, uting fat, or couch, any corn steeped, in order to the making into malt ; he shall forfeit 2*s.* a bushel. 12 An. ft. 1. c. 2. f. 18. 6 G. c. 21. f. 8.

Pressing malt in the cistern.

13. No maker of malt (other than compounders) shall mix corn of one wetting with corn of a former wetting ; or mix any of his couches or floors, with corn of a former wetting, before the same is put on the kiln for drying : on pain of 5*s.* a bushel. 2 G. 2. c. 1. f. 11.

Mixing with corn of a former wetting.

14. If any dealer in malt shall, with malt, fraudulently mix any unmalted corn, or sell or expose to sale any such mixture, or shall attempt to ship off any such mixture in order to export the same ; he shall forfeit 5*s.* a bushel. 1 G. ft. 2. c. 2. f. 13.

Mixing malt with unmalted corn.

15. If any maker of malt shall fraudulently conceal any malt from the view of the gager ; he shall forfeit 10*s.* a bushel. 12 An. ft. 1. c. 2. f. 35.

Concealing malt to avoid the duty.

16. Out of every 20 bushels charged by the gager, there shall be an allowance made of malt charged in the uting fat, cistern, or other vessel, wherein the same shall be found wetting or steeping, or on the floor within 30 hours after the same shall be thrown out of such vessel, — of four bushels, for the difference between the quantity when it is wet and swoln, and when it is converted into dry malt. 12 An. ft. 1. c. 2. f. 20.

Allowance for malt swelling.

And if any corn that hath been steeped be found working or growing upon the floor before it is put upon the kiln, which when dried will not answer so great a quantity from the floor as from the cistern ; out of every 20 bushels so charged upon the floor, there shall be allowed to the maker of the malt which shall be gaged upon the floor, after it hath been thrown out of the cistern 30 hours or more, and before it shall be dryed, ten bushels, for the difference

difference

difference between the quantity when it is making upon the floor, and when it is dried. 12 An. st. 1. c. 2. f. 28.

Entry of malt made.

17. The maltster shall monthly make entry at the office of excise, of all the malt made (either for sale or not for sale) in such month; on pain of 10 l. 12 An. st. 1. c. 2. f. 4.

Payment of the duty.

18. And he shall, within 4 months after entry, pay off the duties, on pain of forfeiting double; and after such default, he shall not sell or carry out any malt until the duty is paid; on pain of double value. 12 An. st. 1. c. 2. f. 6. 1 G. st. 2. c. 2. f. 8.

Drawback of the duty for malt damaged.

19. After the duty is paid, if any quantity shall be damaged by the sinking of the vessel in which the malt shall be transported from one part of the kingdom to another; the justices shall at the next sessions, on proof of such damage and of the payment of the duty, settle the quantity of the damage, and the allowance to be made in respect thereof, and give a certificate of the sum allowed, which shall bear the same proportion to the whole duty, as the damage shall bear to the value of the malt: on producing of which certificate, the officer shall repay or allow to the proprietor the sum certified. 12 An. st. 1. c. 2. f. 14.

But where such loss shall happen, the person who shall sustain the same, shall 3 days before the next sessions, leave notice thereof in writing with the collector of the district where the loss shall happen, and of his intention of applying to the said sessions. f. 15.

Drawback for malt perished.

20. After the duty is paid, if any malt shall be destroyed by fire, by burning of the place where it is kept; or perish by water, by casting away of the vessel in which it is transported: the owner may make proof thereof by two witnesses on oath, and of his having paid the duty, at the next quarter sessions where such accident shall happen; who shall grant a certificate of such loss, on producing of which, the duty shall be repaid. 12 An. st. 1. c. 2. f. 27.

Compounding.

21. The commissioners, or such persons as they shall appoint, and in default of such appointment the collector and supervisor for the division, may compound for the duties of malt made to be consumed in private families, at 5 s. a head by the year; and the houses of such persons compounding shall not be liable to the duty, or to the survey of the officers. 12 An. st. 1. c. 2. f. 11.

But if any such person shall sell or deliver out any malt, or shall permit any other person to make malt in his house, or shall sell any malt liquor, or shall have more persons in his family than he compounds for, without giving notice of them to the officer of excise at the next quarter day; he shall forfeit 5 l. and lose the benefit of his composition, and for every bushel of malt so fraudulently sold or made, he shall forfeit 20 s. f. 12.

Exportation.

22. No malt entred and made for exportation only, shall be liable to the duties; and no drawback shall be allowed for any malt exported. 12 G. c. 4. f. 48.

But the maker shall be allowed, in consideration of his extraordinary charge and trouble, 3 d. for every quarter made for exportation. f. 59.

And by the 26 G. 2. c. 1. There shall be allowed for every 20 quarters of grain made into malt for exportation, thirty quarters

ters of malt, and no more, on exportation, tho' by steeping it shall run out into any greater quantity. S. 13.

And the maker, before he shall begin to wet or steep any steeping of corn to be made into malt for exportation, shall leave notice in writing with the officer, of the quantity of corn intended to be contained in each steeping, on pain of 50 l. and the same shall be kept separate from all other corn to be made into malt for home consumption, on pain of 5 s. a bushel. S. 49, 58.

And no maker of malt shall begin to wet corn to make into malt for exportation, above 6 days before all the corn he may have working on his floors for home consumption shall be dried off; nor shall he begin to wet corn for home consumption, above 6 days before all the corn on his floors for exportation be dried and locked up, on pain of 5 s. a bushel. S. 50.

And the maker shall keep the whole quantity of his corn making into malt for exportation, of one steeping or wetting, when the same shall be on the kiln, or after it shall be taken off the kiln, separate from any former steeping or wetting, until it hath been measured in presence of the officer; on pain of 50 l. 3 G. 2. c. 7. s. 16.

And the officers, during the steeping of the corn so intended for exportation, and till it be dried and locked up, may gage and take an account thereof, in all its operations, as in case the duties were to be charged thereon. 12 G. c. 4. s. 52.

And persons opposing the officers in the execution of this act, shall forfeit 50 l. 12 G. c. 4. s. 58.

And the said maker shall give notice in writing to the officer, or leave notice at the next excise office, of the hour when he intends to take any malt off the kiln, that he may attend the measuring; and after it has been measured, it shall (on pain of 50 l.) be immediately carried on shipboard, or else into storehouses, to be provided by such maker, to be there kept apart from all other malt, under two locks, one to be provided by the proprietor, and the other by the officer at the expence of the proprietor, whereof one key to be kept by the proprietor, and the other by the officer, till the same be delivered out for exportation. 12 G. c. 4. s. 51, 58. 3 G. 2. c. 7. s. 17.

And if he, or any person with his privity, shall open such lock, or make other entrance into the place, or carry any of it away, without consent of the officer, or notice given to him; he shall forfeit 100 l. 3 G. 2. c. 7. s. 18.

And when any maker or proprietor shall be desirous to take away any of the malt for exportation, and shall thereof give notice in writing to the officer 40 hours before the time he shall desire to take out the same, expressing in such notice the quantity of the malt, and the port to which it is to be removed; the officer shall attend at the place where the malt is locked up, and see it measured and delivered out. 12 G. c. 4. s. 53.

And the officer shall keep an account of the malt so delivered out, and of the person to whom it belongs, and shall give such person a certificate to the officer of the division to which it is

intended to be removed, who shall file the same, and make an entry thereof; and if the proprietor shall neglect to deliver such certificate, he shall forfeit 50*l.* 12 G. c. 4. *f.* 54.

And persons intending to ship malt for exportation, shall give at least 48 hours notice before they begin to put it on board, to the officer of the port in writing, of the hour when such shipping is intended to be begun, and the name of the ship; on pain of 5*s.* a bushel. 12 G. c. 4. *f.* 57.

And during the shipping, at all such times as the proprietor shall not be actually shipping merchandizes, the hatches of the ships shall be kept locked with two locks at each hatch, one to be provided and the key kept by the proprietor, and the other by the officer; and the hatches shall be so kept locked, from the time the ships shall be loaded till they be ready to sail. 12 G. c. 4. *f.* 56.

And persons breaking open the hatches of any ship so locked up, shall forfeit 50*l.* 12 G. c. 4. *f.* 58.

And the officers may not only attend the measuring of such malt, but continue on board the ships till they be cleared of their ports. 12 G. c. 4. *f.* 55.

And if it shall be relanded after shipping for exportation, besides the penalty of the bond which shall be given for its exportation, the same shall be forfeited, and treble the value. 26 G. 2. c. 1. *f.* 14.

And the maker who shall use any such storehouse for keeping of malt for exportation, shall every 9 months after the last clearing, clear out the same, on pain of 50*l.* 3 G. 2. c. 7. *f.* 20. Or 5*s.* a bushel: 12 G. c. 4. *f.* 57. And by the 26 G. 2. c. 1. he shall clear out in 15 months, on pain of 50*l.* 8. 18, 19.

And if any unmalted oats or barley be found mixed among malt shipped for exportation, the person shipping the same shall forfeit 5*s.* a Bushel. 6 G. c. 21. *f.* 4.

And if ground malt shall be exported, it shall be computed at so many bushels as it contained before it was ground. 12 An. *ft.* 1. c. 2. *f.* 30.

Power of the justices.

23. The penalties relating to this article (except where it is otherwise above directed) shall be sued for, levied, and mitigated as by the laws of excise, or in the courts at *Westminster*; and be employed half to the use of the king, and half to him that shall sue. 12 An. *ft.* 1. c. 2. *f.* 9. 24 G. 2. c. 40. *f.* 33.

Appeal.

24. Persons aggrieved by any judgment of the justices, may appeal to the next quarter sessions, giving 6 days notice in writing; but if there be not 6 days between the order of the justices and the sessions, the appeal may be at the second sessions. 12 An. *ft.* 1. c. 2. *f.* 37, 38. 1 G. 2. *ft.* 2. c. 16. *f.* 3.

And the sessions may award costs to either party, to be levied by warrant of the justices or two of them, on the goods of the party. 12 An. *ft.* 1. c. 2. *f.* 38.

Certiorari.

25. And no *certiorari* shall be allowed, to set aside any order of the justices. 12 An. *ft.* 1. c. 2. *f.* 37.

Malt liable to the duties and penalties.

26. And all malt in custody of the maker, shall be liable to the duties and penalties, in the same manner as if he were the lawful owner. 12 Ann. *ft.* 1. c. 2. *f.* 10.

Note;

Note; The Statute of the 12 *Ann.* *ft.* 1. *c.* 2. which is the foundation of all the annual acts relating to the duties on malt, is omitted in its proper place in Mr. *Hawkins's* edition of the statutes; as are also divers other clauses, which are here inserted out of several of the other yearly malt acts: which seemeth to indicate that the learned editors had not thoroughly considered this article; supposing perhaps, that as the duties do expire annually, so every clause in the said acts relating thereunto did expire likewise: But they have rectified this omission in part, by inserting the said act of the 12 *Ann.* in the appendix, Vol. 6.

x. Paper.

1. By the 10 *Ann.* *c.* 19. and 12 *Ann.* *ft.* 2. *c.* 9. (which are in part altered and explained by the 12 *Ann.* *c.* 19. and 11 *G.* *c.* 7.) certain duties are imposed on paper imported; which shall be under the management of the commissioners of the customs.

But old rags, old ropes, or junks, or old fishing nets, may be imported duty free. 11 *G.* *c.* 7. *f.* 10.

2. And by the said acts of 10 *Ann.* *c.* 19. and 12 *Ann.* *ft.* 2. *c.* 9. certain duties are laid on all paper made, and also on all paper painted in Great Britain, as followeth:

	s.	d.
For every ream (at 20 quires of 24 sheets each to the ream) of demy fine	2	3
Demy second	1	6
Crown fine	1	6
Crown second	1	1 ¹ / ₂
Fool's cap fine	1	6
Fool's cap second	1	1 ¹ / ₂
Fine pots	1	6
Second pots	0	9
Brown large cap	0	9
Small ordinary brown	0	6

Whited brown 9 *d.* a bundle, each bundle containing 40 quires.

Pasteboards, mildboards, and scaleboards, 3 *s.* a hundred weight.

All other paper not particularly charged, after the rate of 18 *l.* for every 100 *l.* value.

Painted paper (beside the duty paid for the paper before painting) 1 ¹/₂ *d.* a yard square.

But pasteboard made of paper that hath paid the duty, shall not be charged with further duty.

And books printed at Oxford or Cambridge, in Latin, Greek, Oriental, or northern languages, shall have a drawback of the duty on paper.

The said paper paying *ad valorem* shall be computed as it shall be worth to be sold at the next market town, by the oath of the maker or his chief workman, according to his knowledge and belief, to be taken before the collector or supervisor.

3. The commissioners of the treasury shall appoint commissioners of these duties; and they shall substitute inferior officers.

Places of making
to be entered.

4. The maker or painter shall give notice in writing at the next office, of his name and place of abode, and where he intends to make the same; on pain that if he makes any before such notice, he shall forfeit 30*l.* 10 *An. c. 19. f. 43.*

And no person shall use any place for drying the same, or making it fit for use, other than such common place whereof he hath given notice; on pain of 20*l.* S. 44.

And all paper, materials, and utensils found in any private workhouse or other place, for which no entry hath been made or notice given, shall be forfeited. S. 54.

Officer to enter
and take
account.

5. The officer shall by day or night, and if in the night in presence of a constable, be permitted on request to enter into the house, mill, yard, drying house, warehouse, or other place, and take an account, and make report thereof to the commissioners or whom they shall appoint, and leave a copy (if demanded) of such report under his hand with the maker; and if he shall not leave such copy (after demand in writing, 12 *G. c. 28. f. 30.*) he shall forfeit 40*s.* 10 *An. c. 19. f. 48.*

And he shall be permitted to take an account of the quantity of rags, cordage, and other materials, and of all paper in the possession of any painter or stainer, and of their proceedings in making, or in painting or staining it. 10 *An. c. 19. f. 50.*

Mark on paper
before painting.

6. And before any paper shall be printed, painted, or stained, the officer shall be permitted to take account of the dimensions, and shall stamp or seal every sheet and piece, to denote that such account hath been taken; and if the officer shall miss any quantity whereof he had so taken an account, and shall not on reasonable demand receive satisfaction what is become of it, he may charge the duties for it. 1 *G. f. 2. c. 36. f. 17.*

Obstructing the
officer.

7. And if any person shall obstruct any officer, in the execution of his duty, he shall forfeit 20*l.* 10 *An. c. 19. f. 50.*

Removing before
account taken.

8. No maker shall remove any paper of which no account hath been taken, without giving two days notice to the officer; on pain of 20*l.* 10 *An. c. 19. f. 51.*

And no person shall remove any such painted paper, until the officer hath taken an account of the quantity thereof, and until every piece or parcel shall be marked or stamped; on pain of 20*l.* 1 *G. f. 2. c. 36. f. 18.*

Concealing from
the officer.

9. And the maker or stainer concealing any paper or materials, shall forfeit 20*l.* 10 *An. c. 19. f. 53.*

Paper unsurveyed
to be kept sepa-
rate.

10. And the maker and stainer shall keep separate the paper which is unsurveyed, for 48 hours after making or staining, unless it shall be sooner surveyed by the officer; on pain of 50*l.* 10 *An. c. 19. f. 52.*

Entry of paper
made.

11. The maker or painter shall once in 6 weeks make entry on oath at the next office, of all paper made by him fit for use, with the kinds and quantities; on pain of 50*l.* 10 *An. c. 19. f. 45.*

But no person shall be obliged to go to make entry, farther than the next market town. S. 46.

Payment of the
duty.

12. And the duty shall be cleared off in six weeks after entry, on pain of double duty; and after default in payment, no person shall

shall sell or deliver any out, till the duty is cleared off, on pain of double value of such paper sold or delivered out. 10 An. c. 19.

f. 47.

13. Paper that hath paid the duty may be exported, and the Exportation duties shall be drawn back. 10 An. c. 19. f. 57, 58, 59.

But there shall be no drawback allowed on foreign paper exported. 10 G. 2. c. 27.

14. All the excise laws shall be in force for managing these duties; and the penalties shall be sued for, levied, mitigated, and disposed of, as by the laws of excise. 10 An. c. 19. f. 60, 61.

24 G. 2. c. 40. f. 33.

15. And all paper, materials, and utensils, in custody of the maker or stainer, or of any to his use, or in trust for him, shall be liable to all duties in arrear, and to all forfeitures relating to the said duties, in the same manner as if the offender or debtor were the lawful owner. 10 An. c. 19. f. 55.

Paper and utensils liable to distress.

For the stamp duties on paper, see title **Stamps**.

xi. Plate.

1. By the 4 W. c. 5. and 6 G. c. 11. Additional duties are laid on plate imported, over and above what it is charged in the book of rates: which shall be under the management of the commissioners of the customs.

Duty on plate imported.

2. By the 6 G. c. 11. For all silver plate made in Great Britain, a duty of 6d. an ounce shall be paid by the maker.

Duty on plate made in Great Britain.

S. 4.

But manufactures of silver, under three penny weights (except handles, hafts, spoons, thimbles, buckles, clasps, or buttons) shall not be chargeable with the duty. 7 G. ft. 1. c. 20. f. 34.

3. And the commissioners of the treasury shall appoint commissioners for the management of these duties; who shall substitute inferior officers. 6 G. c. 11. f. 6.

Officers for these duties.

4. Moreover, to prevent frauds in the true making of plate, it is enacted by the 12 & 13 W. c. 4. and 1 An. ft. 1. c. 9. that (besides the city of London) York, Exeter, Bristol, Chester, Norwich, and Newcastle upon Tyne shall be appointed for the assaying and marking of plate.

Assayers.

And the goldsmiths, silversmiths, and plateworkers in the said places, shall be incorporated into a company, and chuse wardens yearly. 12 & 13 W. c. 4. f. 2.

And an assayer shall be elected by the company in each of the said places, who shall be sworn by the mayor. S. 4, 5.

5. And every goldsmith, silversmith, and plateworker, within the said places, and elsewhere, shall before he takes upon him to exercise the said trade, enter his name, and mark, and place of abode, with the wardens of the company where an assayer is; and if he shall not make such entry, or shall strike any other mark but what is so entred, he shall forfeit double value, half to the king, and half to him that shall sue in any court of record in the county or place where the offence shall be committed. 12 & 13 W. c. 4. f. 7.

Maker to be entred with the wardens of the company.

Places of working to be entered.

6. Also they shall give notice in writing at the next office for the duties abovementioned, of their names and places of abode, and where they intend to work; on pain of 20*l.* 6 G. c. 11. *f.* 7.

Officers to enter and take account.

And all plate, and other manufactures of silver, which shall be found in any private workhouse, and all private utensils for making the same, of which no notice hath been given, shall be forfeited, or the value thereof. 6 G. c. 11. *f.* 16.

7. The officers for the said duties shall, in the day time, be permitted on request, to enter the workhouse, and take an account of the weight, and shall thereof make return in writing to the commissioners or whom they shall appoint, leaving a copy thereof (if demanded) with the maker; and if any officer shall refuse (after demand in writing, 12 G. c. 28. *f.* 30.) to leave such copy, he shall forfeit 40*s.* 6 G. c. 11. *f.* 10.

Obstructing the officer.

8. And if any maker or worker shall obstruct any such officer, in the execution of his duty; he shall forfeit 20*l.* 6 G. c. 11. *f.* 12.

Maker to keep scales and weights.

9. And the maker shall keep scales and weights at the place of working, and permit and assist the officer to make use thereof; on pain of 10*l.* 6 G. c. 11. *f.* 11.

Removing before surveyed.

10. And no maker (on pain of 40*l.*) shall remove any such plate by him made, of which no account shall have been taken by the officer, without giving him 24 hours notice. 6 G. c. 11. *f.* 13.

Concealing.

11. And if the maker shall conceal any plate, to avoid the duties; he shall forfeit 20*l.* 6 G. c. 11. *f.* 15.

Plate not surveyed to be kept separate.

12. And the plate not surveyed shall be kept separate from that which shall have been surveyed, for 24 hours after making; unless it shall have been sooner surveyed by the officer; on pain of 10*l.* 6 G. c. 11. *f.* 14.

Entry of plate made.

13. And the makers shall once a month make entry in writing upon oath, at the next office for the said duties, of all the silver plate by them wrought within such month, containing the weight and kinds, and how much was made in each week; on pain of 100*l.* 6 G. c. 11. *f.* 8.

Payment of the duty.

14. And they shall clear off the duty in six weeks after such entry; on pain of double duty. 6 G. c. 11. *f.* 9.

Assaying.

15. And every goldsmith, silversmith, and plateworker, inhabiting where there is not an assayer, shall first fix his mark, and then send it to an assayer; and if it be found by the assayer to be of the fineness of the standard, then he shall mark it, and have 6*d.* a pound for his trouble: And if any such person shall make any plate less in fineness than the standard, or put any to sale (except what by reason of its smallness is not capable of the touch) before it shall be assayed and marked; he shall forfeit the same, half to the king, and half to him that shall sue in any court of record in the county or place where the offence shall be committed. 12 & 13 W. c. 4. *f.* 9.

Fineness by the standard.

16. And as to the fineness thereof by the standard, it is enacted by the 6 G. c. 11. that plate may be made, either according to the old standard (of 11 ounces and 2 pennyweights fine silver in every

every pound troy); or according to the new standard (of 11 ounces and 10 pennyweights): but differently marked. S. 41.

17. That is to say, plate of 11 ounces and 2 pennyweights, *Mark.* shall be marked with the maker's mark, *viz.* the first letters of his christian and surname; the mark of the goldsmith's company in *London*, *viz.* the leopard's head, lion passant, and a distinct variable mark to denote the year; (or, with the mark of the worker or maker, and with the mark appointed to be used by the assayers at *York*, *Bristol*, *Chester*, *Norwich*, or *Newcastle upon Tyne*.)

And plate of 11 ounces and 10 pennyweights shall be marked with the maker's mark, *viz.* the first letters of his christian and surname; and the mark of the said company, *viz.* a lion's head erased, the figure of a woman called *Britannia*, and the said mark or letter to denote the year; (or, with the mark of the worker or maker, and the mark of one of the said cities or towns).

12 G. 2. c. 26. f. 5.

18. And to prevent frauds in the duties abovementioned, the maker shall send with every parcel to the assay office, a note in writing, containing the day and year, his christian and surname, and place of his abode, the several kinds of such plate, and the number of each kind, and the weight; which shall be entred in a book by the officer of the company, and afterwards filed; and the same, or copies thereof, shall be delivered by the officer upon oath monthly into the excise office; and the commissioners shall monthly, or oftner if they think fit, appoint inspectors to examine the books. 12 G. 2. c. 26. f. 9.

Account between
the assay and ex-
cise offices,

19. So much wrought plate shall be exported yearly as shall be *Exportation.* allowed by the commissioners of the customs, or 3 of them. 9 G.

10 W. c. 28. f. 1.

And the duties shall be drawn back. 6 G. c. 11. f. 18.

But no drawback shall be allowed for plate above 7 years old.

12 G. 2. c. 26. f. 10.

20. All the powers of the excise laws shall be in force for making these duties; and the forfeitures (not otherwise herein directed) shall be sued for, levied, or mitigated as by any law of excise, or in the courts at *Westminster*, and be disposed half to the use of the king, and half to him who shall sue. 6 G. c. 11.

Power of the
justices.

f. 19, 20. 24 G. 2. c. 40. f. 33.

21. And all the plate, materials, and utensils in the custody of the maker, or of any person to his use, shall be liable to the duties in arrear, and to the penalties; and such proceedings may be had thereupon, as if such maker were the lawful owner. 6 G. c. 11. f. 17.

Utensils liable.

For other regulations concerning plate, not relating to these duties, the reader may consult the statutes at large mentioned under this head; and especially the 12 G. 2. c. 26.

xii. Salt.

Officers for the
salt duties.

1. The duties upon salt shall be under the management of the commissioners of excise. 5 W. c. 7. s. 5.

Or particular commissioners may be appointed; in which case they shall have the same powers as commissioners of the excise. 1 An. st. 1. c. 21. s. 26.

And all collectors and other officers for ascertaining, collecting, or receiving the duty, shall be appointed under the hands and seals of the said commissioners. 5 W. c. 7. s. 5.

And no person shall act as chief commissioner until he shall before a baron of the exchequer take the oaths of allegiance, supremacy, and abjuration; and the oath following:

You shall swear to execute your office, truly and faithfully without favour or affection, and shall from time to time account make and deliver to such person and persons as his majesty shall appoint to receive the same; and shall take no fee or reward for the execution of the said office, from any other person than from his majesty, or those whom his majesty shall appoint on that behalf: So help you God. 5 W. c. 7. s. 14.

And no person shall be capable of any office relating to the said duties (other than that of chief commissioner), until he shall before two commissioners, or two justices of the peace where he shall be appointed officer, take the said oaths of allegiance, supremacy, and abjuration, and the said last mentioned oath *mutatis mutandis*. 5 W. c. 7. s. 15.

British salt
imported.

2. By the 2 & 3 An. c. 14. No salt of the produce of Great Britain, or the Isle of Man, shall be imported or landed in England; on pain that the same shall be forfeited, and also the ship and tackle; and every person assisting therein shall forfeit 20*l.* or be imprisoned 6 months. S. 1. (And by the 5 G. c. 18. s. 23. this is extended to salt shipped for exportation, and put on shore again, or taken out of the vessel.)

And the salt officers may at any time within two months, seize the salt, ship, and tackle; and if the owner shall not in 20 days claim the same, and give security to answer the value, they shall be sold. S. 2.

But this shall not extend to salt shipped to be carried coastwise by certificate. S. 3.

Also, where salt entred for exportation, shall be forced into any port by weather, enemies, or other necessity, the owner or master may within 20 days reland the salt, so as entry be made, and the drawback repaid. S. 4.

Also, where a ship shall come in from Ireland, or any other foreign part, having any salt on board, which was taken in only for provision of the ship; the master may land the same, so as entry be made in ten days, and the duty paid or secured as for foreign salt imported. *Id.* s. 6. But if he shall not enter and pay, or secure the duty in ten days, and before it be landed, the same shall be forfeited; and the master, owner, or importer, shall forfeit double value. 5 G. c. 18. s. 18.

3. By the 5 *W. c. 7.* There shall be paid for every gallon of Foreign salt imported, 3 *d.* over and above other duties. *S. 3.* Foreign salt imported.

And by the 9 & 10 *W. c. 44.* an additional duty is laid, of 7 *d.* a gallon. *S. 3.* The same amounting in the whole to 6 *s.* 8 *d.* a bushel. 8 *G. c. 4.*

The gallon to be rated after 8 gallons to the bushel *Winchester* measure. 5 *W. c. 7. f. 18.*

And 84 *lb.* weight of foreign salt shall be deemed a bushel. 1 *An. ft. 1. c. 21. f. 6.*

Which said duties shall be paid by the importer, on entry, and before landing; yet, on giving security to the collector, he shall have 6 months time for payment: But if he pay ready money, he shall have after the rate of 10 *l.* per cent. per annum abated. 9 & 10 *W. c. 44. f. 6.*

And by the 5 *An. c. 29.* If the salt imported amounts in the whole to more than 40 bushels, a further time is allowed for payment of the duties: In order to which, the salt shall on landing be weighed, cellared, and locked up in the presence of a salt officer, under the custody of the merchant or importer (who is to be at the charge of the cellarage or storehouse); and the merchant or importer may in presence of a salt officer, and by warrant or permit under his hand and seal, have what quantity thereof his occasions may require, not under 40 bushels at a time; giving security for the duty of what quantity he receives, payable in 6 months: and if he shall pay ready money, he shall have after the rate of 10 *l.* per cent. per annum abated. *S. 1, 3.*

But if such foreign salt imported, shall not on landing be secured as aforesaid, it shall be liable to payment of duties, and to such penalties for not paying or securing the same, as if this act had not been made; and no salt so cellared and locked up shall be removed without notice first given to the officer, and without a warrant or permit for conveying it; on pain of forfeiting such salt, and 10 *s.* a bushel, and also 20 *l.* to be recovered of the importer; and the carrier or person removing it, shall be also liable to the penalty of 10 *s.* a bushel, and 20 *l.* for every offence. *S. 2.*

And no foreign salt shall be imported in any ship or vessel of less burden than 40 tuns, and in bulk only (except for the necessary provisions of the ships); on pain of forfeiting the salt and double value thereof, to be recovered of the importer. 3 *G. 2. c. 20. f. 18.*

4. And if any salt be landed before entry made with the salt officer, or before the duty paid, or without a warrant for landing the same signed by the salt officer; it shall be forfeited, or the value, and also 10 *s.* a bushel. 9 & 10 *W. c. 44. f. 6.* And moreover, every person assisting therein, shall forfeit 100 *l.* 5 *G. c. 18. f. 24.*

Landing salt before payment of the duty.

5. And any officer of the salt duties, or customs, may go on board any vessel, to search if there be any salt on board, and may seize the same if it be found in any other vessel than that wherein it was brought into port, unless it had been entred, or the duty paid; and all such salt shall be forfeited, or the value thereof, to be recovered of the master or owner of the vessel, who shall also be liable to all other penalties as if the same had been landed

Search on ship-board.

without

Ships hovering
near the coast.

without entry or payment of duties: and every person obstructing such officer, shall forfeit 40 *l.* 5 *G. c. 18. f. 22.*

6. And where any vessel, laden with salt, shall be found hovering on the coasts, the officers of the customs or salt duties may go on board and compel them to come into port, and may continue on board, till the salt shall be unladen, or the ship depart on her voyage: And if the persons on board such ship, or any other vessel importing salt, shall neglect or refuse to enter, or to unlade such salt, for 20 days after it is come into port, or within that time to depart on their voyage, unless permitted by the chief officer of the customs to stay longer; in such case all the salt on board shall be forfeited, and double value thereof, to be recovered of the master or commander of the vessel. 1 *An. ft. 1. c. 21. f. 7.*

Duty on home
salt.

7. By the 5 *W. c. 7.* a duty is laid on home salt of 1½ *d.* a gallon. *S. 3.*

Which by the 7 & 8 *W. c. 31.* is explained to extend to all salt made from rock salt, salt refined, or salt made from salt. *S. 43.*

And by the 9 & 10 *W. c. 44.* a further duty is imposed on all such salt, of 3½ *d.* a gallon. *S. 5.* The same amounting in the whole to 3 *s.* 4 *d.* a bushel.

Note; By the 3 *G. 2. c. 20.* Those duties were repealed, but were revived by the 5 *G. 2. c. 6.* for 3 years, and so from time to time continued, and at last by the 26 *G. 2. c. 3.* made perpetual.

And by the 9 *An. c. 23.* A further duty of 9 *s.* a ton, is laid on all rock salt exported to *Ireland.* *S. 44.*

And rock salt shall be ascertained as to payment of the duties, at 65 pounds weight to the bushel. 1 *An. ft. 1. c. 21. f. 9.*

All other salt at 56 pounds to the bushel. 9 & 10 *W. c. 44. f. 34.*

Drawback on
rock salt refined.

8. Where any rock salt for which the duties shall have been paid or secured, shall be melted and refined; the person who shall refine it into white salt, shall have an abatement out of the duty of the said white salt, of so much as was charged on the said rock so melted and refined; so as the rock so refined were before the melting thereof weighed in presence of the officer; and so as oath be first made before a justice near adjoining, of the particular quantity of rock salt by such refiner employed in making the said white salt, and that he or any other person by his privity did not increase the said rock salt by mixing or other undue practice, and that no former allowance for the said rock salt had been made to his use; and so as due proof be made upon oath or otherwise, that the duties for the said rock salt so refined were paid or secured. 10 & 11 *W. c. 22. f. 6.*

And no rock salt shall be refined or made into white salt in any place except within ten miles of the pit, or at such places as were used for refining rock salt before May 10, 1702. on pain of 40 *s.* a bushel. 1 *An. ft. 1. c. 21. f. 10.*

Entry of salt
works and pits.

9. Every maker of salt, refiner of rock salt, and proprietor of any salt works or pits, who shall set up or use any salt work, salt pit, salt pan, storehouse, warehouse, or other place, for the making,

king, laying, refining, or keeping of salt or rock salt, without giving notice thereof at the next salt office; shall forfeit 40*l*.

1 *An. ft. 1. c. 21. f. 1.*

10. And if any salt maker, importer of salt, or refiner or proprietor of rock salt, shall on request or demand made, in the day time, or in the night in presence of a constable, refuse to permit the officer to enter and come into his works, warehouse, storehouse, or other place for making, laying, refining, or keeping of salt; he shall forfeit 40*l*. 1 *An. ft. 1. c. 21. f. 2.*

Officer to enter and survey.

11. And, generally, if any person shall obstruct any officer in the execution of his office, or of the powers given him by any law relating to the salt duties; he shall forfeit 20*l*. and for non-payment, and in default of distress, he may be committed to the house of correction, to be whipt and kept to hard labour for any time not exceeding one month. 1 *An. ft. 1. c. 21. f. 4.*

Obstructing the officer.

12. No salt shall be delivered from any salt works or pits, without notice first given to the officer; on pain of forfeiture of the salt so delivered, and of 20*l*. by the owner of the works or pits.

Removing salt without notice.

5 *W. c. 7. f. 19.*

And by the 9 & 10 *W. c. 44.* No salt shall be delivered from any salt works or pits, without notice given to the officer; on pain of the owner forfeiting the same, and 10*s*. a bushel. *S. 26.*

13. The collector shall provide at every salt work or pit, a sufficient beam, scales, and weights, or stilyard, and shall have liberty to fix the same, for weighing the salt that shall be delivered from thence; and one or more persons living near, shall be admitted and sworn to the true weighing of such salt, before one justice near adjoining, without fee; and he shall be paid by the collector or officer for the duties. 7 & 8 *W. c. 31. f. 46.*

Scales and weights.

14. Every owner of any rock pit, who shall take any rock salt out of such pit, shall before the removal thereof, cause the same to be weighed in the presence of the salt officer, who shall attend at all reasonable hours in the day time to see it weighed, and take an account and make return thereof in writing under his hand to the commissioners of excise, or whom they shall appoint, leaving a true copy under his hand with the proprietor: and if the proprietor refuse to weigh it in presence of the officer when taken out of the pit, or suffer any rock salt to be removed from the pit before it hath been weighed; he shall forfeit 20*l*. and double value. 10 & 11 *W. c. 22. f. 3.*

Weighing.

15. All makers and proprietors of salt shall make entries with the salt officers of the quantity by them made and delivered, or imported; and shall have a warrant under the hand and seal of an officer, empowering them to carry away the same, before it shall be removed, which warrant the officer shall give on paying or securing the duties (in 9 months, 5 *An. c. 29. f. 5.*): But if any person at the time of entry shall pay ready money, he shall have after the rate of ten *per centum per annum* allowed. 5 *W. c. 7. f. 6.*

Entry of salt made.

16. And the proprietor of rock pits shall clear off the duties of all rock salt, in two days after the charge made by the officer, or within the said two days give security to pay the same (in 12 months, 5 *An. c. 29. f. 5.*); on pain of double value of the duties:

Payment of the duties.

ties: But if he shall pay within the two days, he shall be allowed after the rate of 10*l. per centum per annum*, for the said 12 months. 10 & 11 *W. c. 22. f. 4, 5.*

Discount on payment.

17. And persons giving security for payment of the duties, may at any time within 28 days after giving the same, pay the duty, and shall have a discount after 10*l. per centum per annum* for the remainder of the time. 1 *An. st. 1. c. 21. f. 29.*

How far rock salt may be removed, with the duty unpaid.

18. But the owners of rock salt, may remove it out of the pits, or warehouses adjoining or belonging to such pits, into their other warehouses or places for storing thereof, for convenience of selling or shipping, after entry made, and a warrant taken for the same from the next officer; and shall not be obliged to pay or secure the duty on such removal. 5 *W. c. 7. f. 22.*

Salt carried without a permit.

19. The officers may seize all salt carried before entry, without a permit, and the same shall be brought to the next office; and if it shall not be claimed by the owner or one deputed under his hand, in ten days, it shall be forfeited and sold the next general day of sale: And if it be claimed in ten days, and the claimer doth not make it appear by the oath of one witness that it had been duly entred, and a warrant obtained for removing it, it shall likewise be forfeited: And every person who shall carry or cause it to be carried before such entry and warrant, shall forfeit double the value. 5 *W. c. 7. f. 7.* And also 10*s. a bushel.* 9 & 10 *W. c. 44. f. 12.*

And by the 1 *An. st. 1. c. 21.* If any salt carrier, or other person, shall remove any salt from any salt works, or place thereunto belonging, without entry and payment of the duties or securing the same, or without a permit; the officers may not only seize the salt, but also apprehend the offender, and if he shall not on conviction pay the penalties, and no sufficient distress can be found, he may be committed to the house of correction to be whipt and kept to hard labour for any time not exceeding one month. S. 4.

And by the 2 & 3 *An. c. 14.* The carrier, who shall carry any salt without a permit, shall forfeit 20*l.* S. 8.

Salt found unentred.

20. And every person in whose possession any salt shall be found, near the salt works or sea coasts, which hath not been entred, and the duty paid or secured; shall if it be foreign salt, be liable to such penalties as if he had landed the same without entry or payment of duties; and if it be *English* salt, he shall be liable to such penalties, as if he had removed it from the salt works without entry or payment of duties, and without a permit; unless he shall make it appear, that he bought it of a maker, retailer, or importer of salt, and of whom. 1 *An. st. 1. c. 21. f. 3.*

Several permits to be delivered with several parcels.

21. The salt officer shall deliver *gratis* and without delay, so many several permits to each carrier of salt, as he shall demand for such several horse loads of salt as he shall load at one time, and at one salt work. 7 & 8 *W. c. 31. f. 47.*

Prices of salt.

22. The lord mayor and aldermen in *London*, and the justices of the peace in the country at their general sessions, may set and publish in writing the prices of salt, and alter the same as there shall be occasion: and persons refusing to sell at such price, or selling at a higher price, shall forfeit 5*l.* half to the king, and half to the informer,

informer, by distress, by warrant of the lord mayor or any such justice; and in default of sufficient distress, to be imprisoned till paid. 7 & 8 W. c. 31. s. 92.

23. By the 9 & 10 W. c. 6. No person dealing in salt, shall ^{Salt to be sold by weight.} sell it otherwise than by weight, after the rate of 56 pounds to the bushel; on pain of 5 l. to the informer; to be determined by two justices residing near: And the party grieved may appeal to the next sessions. And the said justices shall on complaint summon the party accused, and on appearance or contempt examine the matter, and on proof by the oath of two witnesses, or confession, give judgment, and shall issue their warrant to levy the same by distress, and cause sale thereof to be made, if not redeemed in 6 days, rendering the overplus, and for want of sufficient distress, shall imprison the offender till satisfaction is made.

And no person shall buy salt otherwise than by weight, and not by measure; on pain of 10 s. a bushel, and so proportionably. 1 An. st. 1. c. 21. s. 28.

24. No retailer or shopkeeper shall ship any salt to be sent to ^{Carrying coast-} any port within the kingdom, before he hath made it appear by ^{wife.} oath or otherwise, before the commissioners or a salt officer, that the duty is paid or secured, or that it was bought of some other retailer or shopkeeper that hath paid the duty. 5 W. c. 7. s. 8.

And all salt to be put on shipboard, shall be weighed at the place where taken on board; and none shall be carried on board before it is weighed, and a permit containing the quantity is obtained; on pain of forfeiture, and 10 s. a bushel: But if the officer shall not attend to weigh it, or refuse to give a permit, it may be carried on board without incurring any penalty. 10 & 11 W. c. 22. s. 10, 11.

And where any salt shall be laid on shipboard, the officer of the customs where it shall be laden, shall in the cocquet (which cocquet shall be also signed by the salt officer) express the quantity: And if such ship shall come into any port, the officers of the customs or of the salt duties, may go on board and demand a sight of the cocquet, and if any such officer shall have just cause to suspect, that there is not so much salt on board as the quantity expressed in the cocquet, and shall make affidavit thereof, before the collector or customer of the port, or person executing either of their offices; he may weigh all the salt on board; and if there shall not be so much as the cocquet expresseth (making allowance for waste) the salt remaining shall be forfeited. 1 An. st. 1. c. 21. s. 13.

And persons shipping salt to be carried coastwise, the duties for which have been paid or secured, shall have an allowance for waste after the rate of 3 bushels for every 40 bushels of white salt, and after the rate of a bushel and an half for every 40 bushels of rock salt; which allowance shall be made but once for the same salt, altho' it be carried from several ports coastwise. 5 An. c. 29. s. 4. 6 An. c. 12. s. 1.

And every commander of any vessel that shall carry salt from one port to another within the kingdom, shall (before he hath a warrant for landing it) deliver to the salt officers in the port of landing, a true particular of the quantity, signed by the salt and custom-

customhouse officers of the port from whence he came; and then the master, mate, or boatswain, shall make oath before some of the commissioners or their officers, that to his knowledge there hath not been laid on board any salt since he came from such port. And if the vessel be to deliver one part of the salt at one port, and another part at another port, then the officers for the salt and customs, where part of the salt shall be delivered, shall certify on the back of the warrant, or by certificate alone, under their hands and seals, how much of the salt hath been there landed; on pain of forfeiting double the value of the salt that shall be otherwise delivered. 5 *W. c. 7. f. 9.* And likewise 10 *s.* a bushel. 9 & 10 *W. c. 44. f. 12.*

And the officer at the unlading port may go on board the ship, and demand a sight of the permit, and weigh the salt upon unlading; and if it be more in weight than is contained in the permit, the surplussage shall be forfeited. And if the master of the ship shall refuse to shew the permit, the officer may seize and detain the salt till it be produced. And if he do not produce it in 4 days after seizure, the salt shall be forfeited. 10 & 11 *W. c. 22. f. 12, 13.*

On reshipping any salt from any boat, barge, or other vessel, and before any dispatches be granted for the salt so reshipped, the master, mate, or chief boatman, shall make oath before the salt officer, that all the salt taken in at the place of lading is reshipped on board such vessel, and that no salt hath been added to it or taken from it, to the best of his knowledge and belief; on pain of forfeiting double the value of the salt that shall be otherwise reshipped, and likewise 10 *s.* a bushel. 5 *G. c. 18. f. 25.*

And where any subject hath shipped salt that hath paid duty, in order to be conveyed to some part of *England*, and any of it is lost at sea (or in any port, harbour, or river, 8 *G. c. 4. f. 11.*) by storm, or being thrown overboard for preserving mens lives or the vessel (or by sinking of the ship, or be taken by enemies, 9 & 10 *W. c. 44. 2 & 3 An. c. 14.*); in such case, the merchant or owner of the salt shall, on proof made by the oaths of two witnesses, whereof the master or mate shall be one, at the quarter sessions where he shall inhabit, of the loss of such salt, and that the same was not occasioned by any leakage of the ship, or any negligence or default of the master or mariners, receive from the said sessions a certificate that such proof was made before them; and on producing the certificate to the salt officer he shall let him buy the like quantity duty free. 2 & 3 *An. c. 14. f. 18.* Which certificate shall also vacate the security given for payment of the duties. 26 *G. 2. c. 32. f. 6.*

Exportation.

25. When any salt shall be entered to be put on board, and the duty paid or secured; the officer shall, on due notice, by himself, or deputy, between sun rising and setting, attend the weighing it out, without loss of time; on pain of 40 *s.* 9 & 10 *W. c. 6. f. 3.*

And the salt officers may go aboard all ships exporting salt, and continue, and take an account thereof; and if any person shall obstruct any such officer, he shall forfeit 20 *l.* 1 *An. st. 1. c. 21. f. 15.*

And

And there shall be a drawback of the duties on salt exported.
5 W. c. 7. f. 11. 10 & 11 W. c. 22. f. 7. 5 An. c. 29. f. 16.

Moreover there shall be an allowance of 4 bushels for every 40 bushels of white salt, and of two for every 40 bushels of rock salt, exported to *Ireland*; for the waste in carriage. 5 An. c. 29. f. 14.

And if any salt, for which the duty hath been repaid on exportation, shall be landed again before the duty be again paid, and entry made, and other things performed, as in case of foreign salt imported; the offender shall forfeit double value, and 10 s. a bushel, and the other penalties for foreign salt landed unentred. 9 & 10 W. c. 44. f. 27. 5 W. c. 7. f. 20.

And if any ship laden with salt exported, shall by stress of weather or otherwise be drove into any port, the salt officer may come on board, and continue till the ship shall unlade her cargo, or return to sea; on pain of 20 l. to be recovered of the master who shall refuse the officer to come or continue on board. And if any part of the salt shall be put on shore, without entry or repayment of the duty; the said salt, and also the whole cargo of salt in the ship, shall be forfeited. 1 An. st. 1. c. 21. f. 12.

And where any salt, for which the duties shall have been paid or secured, shall be shipped in order to be exported, and the same shall perish by sinking of the ship in the port, before the exporter shall be intitled to a drawback; the exporter or proprietor shall on proof made at the next sessions, to be held next to the place where it shall so perish, of the loss of such salt, receive from the said sessions a certificate, that such proof was made before them; and on producing the certificate to the collector of the salt duties, he shall let such person buy the like quantity duty free. 2 & 3 An. c. 14. f. 10.

And where any salt shall be shipped in order for exportation to *Ireland*, and it shall perish by sinking of the ship, or be taken by enemies; the exporter or proprietor shall on proof made at the quarter sessions for the place from whence it was exported, of the loss of such salt, receive from the said sessions a certificate, that such proof was made before them; and on producing the certificate to the officer of the place where the duty hath been paid or secured, the security shall be discharged, and the money repaid. 4 An. c. 12. f. 11. 9 An. c. 23. f. 46. Proof to be made in two years. 26 G. 2. c. 32. f. 7.

26. The curers of fish for exportation may import foreign salt, Salt for curing
or take from the pit or work *British* salt (or rock salt refined, of fish.
8 G. c. 16. f. 6.) for curing fish for exportation, without duty,
except the customs on importation; such foreign salt being landed,
and such *British* salt being taken from the pits or works, and
weighed, in the presence of an officer, and being lodged in a
warehouse, under a lock both of the officer and proprietor; which
shall remain there during the several intervals of the fishing season.
5 G. c. 18. f. 1.

And any person who shall imbezil any foreign salt after importation, and before cellaring, shall forfeit 20 s. a bushel; and any person who shall imbezil any *British* salt, after weighing at the pits

pits or works, and before cellaring, shall forfeit 10 s. a bushel. 5 G. c. 18. s. 4.

The proprietor shall enter at the next office the quantity so by him lodged; and the officer shall keep an account of the quantity in his custody 5 G. c. 18. s. 1.

And at the beginning of the fishing season, the proprietor or his agent shall make oath in writing before an officer at the next office, declaring the quantity so lodged, and that it is all intended for curing of fish for exportation only, and shall not by his consent be delivered but for the said purpose: after which oath so made and filed, the officer in whose custody the salt hath continued during the interval of the fishing season, shall deliver all the said salt into the sole custody of the proprietor. 5 G. c. 18. s. 1.

And in the case of herrings to be cured for exportation, it is enacted by the 8 G. c. 4. and 8 G. c. 16. that the proprietor of such salt delivered duty free, or his agent, shall instead of the said oath, make oath in writing at the next salt office, declaring the quantity of the foreign or *British* salt respectively lodged for curing of fish, and that it is intended for the curing of fish for exportation only, and shall not by his consent be delivered but for that purpose, except so much thereof as shall be used for curing such red or white herrings as shall be entered for home consumption, and charged with the duties by the said acts respectively chargeable thereupon.

And no foreign salt shall be delivered over from the joint custody of the officer and proprietor, into the sole custody of the proprietor or his agent, for curing fish for exportation; except he give security to the satisfaction of the chief officer of the salt duty in the port, that he will account for the foreign salt so by him received, or answer the penalties. 8 G. 2. c. 12. s. 3.

And for every bushel of salt so lodged, which shall be either carried away, or found wanting at there delivering thereof into the sole custody of the proprietor, reasonable allowance for waste being first made; the proprietor shall forfeit 20 s. 5 G. c. 18. s. 3.

And at the end of every fishing season, the officer shall take an account of the quantity remaining in hand which shall be locked up as aforesaid: and the proprietor shall (within 3 months after the expiration of each year, 8 G. c. 4. s. 10.) deliver an account in writing into the office, containing the quantity of fish exported or entered for exportation, on which the salt hath been used; together with a certificate from the officer where it is shipped for exportation, verifying the account; which account shall be also affirmed by the oath of the proprietor or his agent, and remain in the office; and if any of the salt shall be delivered over to any other person, and used by him in curing of fish, that also shall be expressed in the account, and such person shall in like manner make another account of all the salt used by him: And if any such person shall neglect or refuse to deliver such account within the said time; he shall forfeit 40 l. 5 G. c. 18. s. 1.

And if the proprietor of such salt so delivered over, shall not make it appear by oath or otherwise to the proper officer, that such salt so delivered over was used for curing of fish; he shall be deemed guilty of imbeziling it, and forfeit 50 l. 11 G. c. 30.

f. 41.

Also the said account shall express the quantity of red or white herrings entred for home consumption, on which such salt hath been used. 8 G. c. 4. f. 3. 8 G. c. 16. f. 3.

And for every bushel of salt, so taken out of the cellar or salt works, which shall not be so accounted for by such oath and certificate; or by certificate from the quarter sessions, that proof was there made, that such salt was put on board for curing fish at sea, and was there taken by enemies, or otherwise lost at sea; or shall not be returned into, or found remaining in the cellar or warehouse: the owner or other person standing accountable for the same, shall forfeit 20 s. And the proprietor or his agent selling, giving away, using, or delivering any such salt otherwise than for the purposes aforesaid; shall forfeit 20 s. a bushel; And every person buying or receiving the same, shall forfeit also 20 s. a bushel: And in default of payment in 14 days after conviction, and where no sufficient effects can be found to answer the same, he shall be sent to the house of correction, to be whipped and kept to hard labour, not exceeding 3 months. 5 G. c. 18. f. 2.

For every cask of pilchards or scads exported, containing 50 gallons, shall be paid by the salt officer an allowance of 7 s. for every hundred of codfish, ling, or hake (except dried ones called haberdines) of 14 inches long, from the bone in the fin to the third joint in the tail, 5 s. for every barrel of wet codfish, ling, or hake, of 32 gallons, 2 s. for every hundred weight of haberdines 3 s. for every barrel of salmon of 42 gallons, 4 s. 6 d. for every barrel of white herrings 2 s. 8 d. for every barrel of full red herrings 1 s. 9 d. for every barrel of clean shotten red herrings 1 s. for every last of dried red sprats 1 s. And the officers shall cut off part of the tail of the codfish, ling, and hake; and mark the casks of the other fish; that it may be known that they have once had the allowance. 5 G. c. 18. f. 6.

And the maker or curer of red herrings, before he remove them (except for exportation) from the place of curing, shall make entry thereof at the next salt office, and pay 1 s. 8 d. a thousand. And if they be packed up in casks, the number shall be marked on the head; and a permit shall be given by the salt officer, expressing the number, and the mark and number of the casks, and for what place they are intended, and whether to be sent by land or water; on pain of forfeiting all the red herrings removed otherwise, and also 40 s. a thousand. 8 G. c. 4. f. 2. And as the duties on salt shall rise or fall, the 1 s. 8 d. a thousand shall rise and fall proportionably. S. 5.

And the maker or curer of white herrings, before he remove them (except for exportation) from the place of curing, shall make entry thereof at the next salt office, and pay 3 s. 4 d. a barrel; and the cask shall be marked on the head, shewing the contents: then a permit shall be given by the salt officer, expressing the quantity, and mark and number of the casks, and for

what place they are intended, and whether to be sent by land or water; on pain of forfeiting all the white herrings removed otherwise, with the casks, and also 40 s. a cask. 8 G. c. 16. S. 2.

And the officers at all times in the day, or in the night in presence of a constable, may enter into the cellars and ware-houses, and inspect the curing of the fish, and gage the salt, and mark the casks, and see them exported; and if any person shall obstruct them, he shall forfeit 20 l. 5 G. c. 18. s. 7.

No herrings, pilchards, scads, codfish, ling, hake, salmon, or dried red sprats, shall after they be put on board any boat or vessel, in order to be exported, be taken out thereof, otherwise than to put the fish into the ships in which they are to be exported, nor put on shore but in presence of a salt officer; on pain that the same shall be forfeited, and also the ship and tackle; and every person assisting therein, shall forfeit 20 l. or be imprisoned 6 months. 5 G. c. 18. s. 23. 2 & 3 An. c. 14. s. 13.

If the said fish shall not be exported, for want of an opportunity, while they are good and merchantable; the owner may cause them to be destroyed in the presence of an officer: and the officer's certificate that they were destroyed, shall be admitted to verify the account. 8 G. c. 4. s. 4.

No person shall cure or pack pilchards for sale, unless he be owner or part owner of a segn or drift net, or have the consent of such owner in writing, and that on each cask or hoghead the word *Segn* or *Drift* shall be burnt with an iron, together with the name and surname of the owner, and the number of pilchards; on pain of double value. 1 Ann. s. 1. c. 21. s. 31.

Salt for curing
of beef and
pork.

27. For every barrel of salted beef or pork exported for sale, there shall be allowed 5 s. a barrel; to be paid by the salt officer in 30 days after demand, on a debenture to be prepared by the collector of the customs, and verified by the searcher as to the quantity, and that it is good and merchantable: and the oath of the exporter or agent shall be first taken before the principal officers of the port, that it was salted with salt for which the duties have been paid and not drawn back, and that it is really exported for sale, and that no part thereof was spent nor intended to be spent for the ship's use, and not intended to be relanded; and the salt officers, on exportation of beef or pork, may mark the barrel or vessel, that it may be known to have been exported. 5 An. c. 29. s. 8.

And if any such beef or pork shall be relanded, it shall be forfeited, and also 40 s. a barrel; to be recovered of the importer or proprietor. S. 9.

Using brine or
rock salt instead
of salt.

28. No person shall use any brine before it is boiled into salt, or any rock salt before it is refined into white salt, for pickling or curing of flesh or fish, or preserving any provisions; on pain of 40 s. for every gallon of brine, or pound of rock salt. 1 An. s. 1. c. 21. s. 5.

And every person who shall carry any brine from the salt pits (other than the known proprietors of pans for boiling it into white salt) shall likewise forfeit 40 s. a gallon. 5 G. c. 18. s. 17.

29. All penalties and forfeitures given by any act relating to the duties upon salt (except where it is herein otherwise directed) shall be employed half to the use of the king, and half to him who shall seize or inform; to be recovered in such manner, and with such power of mitigation, as any forfeiture may be by any law of excise; or in the courts at *Westminster*. And every such officer may seize all salt and other things, which by any law relating to the duties on salt are declared to be forfeited. 5 G. c. 18. f. 26. 24 G. 2. c. 40. f. 33.

30. And if any person is aggrieved by any order of two justices relating to the duties upon salt, or to any forfeiture or offence concerning the same; he may appeal to the next quarter sessions. 10 & 11 W. c. 22. f. 9. Appeal.

31. But no dealer in salt shall act as a justice of the peace in any matter relating to the duties upon salt; and if there shall not be a sufficient number of justices in any corporation, not dealers in salt, the justices of the county shall have power to act therein. Dealer in salt not to act as a justice. 1 An. st. 1. c. 21. f. 18.

xiii. Soap.

1. By the 10 An. c. 19. and 12 An. st. 2. c. 9. There shall be paid for all soap imported (over and above former duties) 3 d. a pound; which shall be under the management of the commissioners of the customs. Duty on soap imported.

2. And by the said acts, there shall be paid for all soap made within the kingdom, 1 d. $\frac{1}{2}$ a pound. Duty on soap made in the kingdom.

3. And the commissioners of the treasury shall appoint commissioners for the duty on soap made in the kingdom; who shall substitute inferior officers. 10 An. c. 19. f. 5. Officers for the duties on soap.

4. And no maker of soap shall set up, alter, or use any boiling house, workhouse, warehouse, storehouse, shop, room, or other place for the making or keeping of soap, or for the boiling or keeping any oil, tallow, pot-ash, lime, or other materials proper to be made into soap; or use any copper, kettle, furnace, fat, cistern, trough, or other vessel for the boiling or making of soap, without first giving notice thereof in writing, at the next office for the said duties; on pain of 50 l. 10 An. c. 19. f. 6. Place of making to be entered.

And all soap, oil, tallow, and other materials, which shall be found in any private boiling house, workhouse, warehouse, or other place, and all private coppers, kettles, furnaces, troughs, and other vessels, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof. 10 An. c. 19. f. 19.

5. The officer shall at all times, by day or night, and if in the night then in presence of a constable, be permitted on request to enter the house, boiling house, warehouse, or other place, used by any maker of soap; and by gaging, weighing, or otherwise, take an account of the quantity, and thereof make return in writing to the commissioners or whom they shall appoint, leaving a true copy, if demanded, under his hand with the maker; and if he shall refuse or neglect to leave such copy (after demand in writing, Officer to enter and survey.

writing, 12 G. c. 28. f. 30.) he shall forfeit 40s. 10 An. c. 19. f. 12.

And if any maker shall obstruct the officer, he shall forfeit 20l. S. 15.

Notice of the
time of working.

6. Every maker of soap, before he begin any making, if within the bills of mortality, shall give 12 hours, if elsewhere, 24 hours notice in writing to the officer, of the time and hour when he intends to begin; on pain of 50l. 11 G. c. 30. f. 33.

And putting lees or lye into the copper or other utensil, shall be deemed a beginning such making, so as to subject him to the forfeiture. S. 34.

And if the making shall not begin in 6 hours after the time mentioned in the notice within the bills, and in 12 hours elsewhere; the notice shall be void. 11 G. c. 30. f. 35.

Reworking stale
soap.

7. If any stale or rotten soap, or cuttings, be put into the copper or pan, in presence of an officer, to be refreshed or new made; the officer shall make allowance of the duty, and certify the same upon his report. 10 An. c. 19. f. 28.

But if it shall be put into any making of soap, without giving to the officer 12 hours notice in writing within the bills, and 24 hours elsewhere; there shall be no allowance made for it. 11 G. c. 30. f. 37.

And if any officer shall falsely pretend that he had such notice when he had not, and make and certify such allowance; he, and also the maker, shall forfeit 10s. for every pound so certified. S. 38.

Scales and
weights.

8. And the maker shall keep scales and weights where he makes his soap, and permit and assist the officer to use them; on pain of 10l. 10 An. c. 19. f. 13.

Officer to charge
for materials
missing.

9. And the officer shall be permitted to take an account of the quantities of oil, tallow, pot-ashes, lime, and other materials proper to be made into soap, that shall be in the maker's possession; and if the officer shall miss any quantity of them, which he had taken account of the last time he was there, and shall not on reasonable demand receive satisfaction what is become of them, the officer may charge him with such quantity of soap, as such materials in his judgment would have made, not exceeding 14 gallons of such ingredients (besides the lees) for every barrel. 10 An. c. 19. f. 14.

Removing soap
unsurveyed.

10. And no maker shall (on pain of 20l.) remove any soap, of which no account hath been taken by the officer, from where it was made, without giving the officer within the bills 24 hours notice, and in other parts two days notice, of his intention to remove the same. 10 An. c. 19. f. 16.

Unsurveyed to be
kept separate.

11. And the makers shall keep all the soap by them made, and not surveyed, separate from that which hath been surveyed, for 24 hours after making, within the bills, or two days in any other place; unless it shall have been sooner surveyed; on pain of 5l. 10 An. c. 19. f. 17.

Concealing.

12. And if any maker shall conceal any soap or materials, he shall forfeit the same, and also 500l. 1 G. st. 2. c. 36. f. 14, 15. And

And by the 23 G. 2. c. 21. If any officer of the excise shall have cause to suspect, that any soap is fraudulently concealed, if it is within the bills, then on oath made by such officer before two commissioners, or if it is elsewhere, then upon oath before any justice of the peace, setting forth the ground of his suspicion, they or he may empower such officer by day or night by special warrant (but if in the night, then in presence of a constable) to enter into the places suspected, and seize and carry away the same, as forfeited, together with the package; and if any person shall obstruct such officer, he shall forfeit 100*l.* S. 34.

13. The maker within the bills shall monthly, and elsewhere Entry of soap every 6 weeks, make entry in writing at the next office, of all made. the soap by him made within the said month or 6 weeks, setting forth the weight, and what quantity was made at each boiling in the several weeks; on pain of 50*l.* Which entries shall be on the oath of the maker, or chief workman, according to the best of his knowledge and belief. The said entry and oath within the bills, to be at the general office, and elsewhere with the collector and supervisor. 10 *An. c. 19. f. 9.*

But no maker shall be obliged to send further to make entry, than to the next market town. S. 10.

14. And the measure of soap shall be this; Every barrel shall Measure of soap. contain 256 *lb. averdupois*; half barrel 128; firkin 64; half firkin 32; besides the weight or tare of the cask. And all soap (except hard cake soap, and ball soap, 10 *An. c. 26. f. 111.*) shall upon making thereof be put by the maker into such cask, and none other. 10 *An. c. 19. f. 8.*

And all soft soap that shall be filled in any other cask less than barrels, half barrels, firkins, and half firkins, shall be forfeited, and also 5*l.* 12 *An. f. 2. c. 9. f. 19.*

15. The maker within the bills, shall within 4 weeks, and Payment of the elsewhere within 6 weeks after entry, clear off the duties; on pain duties. of double duty: And no maker, after such default in payment, shall sell or deliver out any soap, till he hath paid off his duty; on pain of double value. 10 *An. c. 19. f. 11.*

16. Any person who shall use soap in making of cloths, or Drawback for other manufactures of sheeps or lambs wool only, or manu- soap used in the factures whereof the greatest part of the value of the mate- woollen manu- rials shall be wool; or in finishing the said manufactures; or pre- facture. paring the wool for the same; or in whitening of new linen in the piece, (or his chief workman) — may make proof in writing by affidavit, before the collector or supervisor, specifying the kinds and quantity of the manufactures, and the days between which, and the places where the same were made, prepared, or whitened, and the quantity and kind of soap consumed therein, and that no allowance for the duty on such soap hath been made: whereupon the collector shall repay the duty on such soap. 12 *An. f. 2. c. 9. f. 16.*

And the said affidavit need not be stamped; and no fee shall be taken, except 4*d.* for writing the affidavit, on pain of treble damages to the party grieved, with full costs; to be recovered as the other penalties. S. 17.

Soap carried
coastwise.

Importation and
exportation.

And any person making false affidavit, shall forfeit treble value of the allowance; and for the second offence (on conviction in the courts at *Westminster*) shall suffer as for wilful perjury. *S. 18.*

17. Cocquets granted for shipping soap, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and fold, and where consigned; and if shipped without such cocquet, the same shall be forfeited, and seized, together with the package. *23 G. 2. c. 21. s. 29.*

18. No soap shall be imported, otherwise than in some package, containing at least 24 pounds of neat soap, and stowed openly in the hold; on pain of being seized and forfeited, together with the package, and the master of the vessel to forfeit 50*l.* *23 G. 2. c. 21. s. 27.*

But on information brought against any such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the soap was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner, in payment of the forfeiture. *26 G. 2. c. 32. s. 8.*

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all soap forfeited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be found unshipping or unshipped. *23 G. 2. c. 21. s. 28.*

Soap that hath paid the duty may be exported; and the duties shall be drawn back. *10 An. c. 19. s. 22, 23, 24.* But no drawback shall be allowed on the exportation of any foreign soap imported. *23 G. 2. c. 21. s. 36.*

The officers of excise or customs may seize any soap with the package, that shall be found in any vessel, cart, or other carriage; where they shall have good reason to believe that the same was made in some private workhouse, or clandestinely imported without payment of duty, or that the same has been exported and re-landed after repayment of the duty; and if the party in whose possession the same shall be found, shall not at the hearing of the information, make it appear that the duty hath been paid or secured, he shall forfeit 5*l.* for every 100 pounds weight; and also the goods and package shall be forfeited. *23 G. 2. c. 21. s. 31.*

And if any person shall knowingly harbour or conceal any soap unlawfully imported, or re-landed after shipping for exportation upon debenture; he shall, whether he claims any property therein or not, forfeit 50*l.* for every hundred weight, together with the goods and package. *23 G. 2. c. 21. s. 32.*

And where any such soap shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation at the next market town, on the market day next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof. And the judgment

thereon

thereon shall not be liable to any appeal, or be removed by *certiorari*. 23 G. 2. c. 21. f. 33.

19. The excise laws shall be in force for managing these duties; Power of the and the penalties (except where it is herein otherwise directed) justices. shall be recovered and mitigated as by the laws of excise, or in the courts at *Westminster*; and distributed half to the king, and half to him that shall sue. 10 An. c. 19. f. 26. 11 G. c. 30. f. 39. 24 G. 2. c. 40. f. 33.

20. And where any soap shall be seized for non-payment of Proof to lie on duties, or non-entry, and it shall be disputed whether such pay- the claimer. ment or entry were made or not, the proof shall lie on the claimer, and not on the officer. 23 G. 2. c. 21. f. 35.

21. And if the party is not satisfied with any judgment of the Appeal. justices on the act of 23 G. 2. c. 21. abovementioned, he may appeal to the next quarter sessions (except in the case before mentioned, where no person shall claim the goods seized). S. 37.

22. And on information on the said act of the 23 G. 2. the Mitigation. mitigation shall not reduce the penalty to less than a fourth part, over and above the costs to be allowed. S. 38.

23. And all soap, materials, and utensils in the custody of the Utensils liable. maker, or of any in trust for him, shall be liable to the duties and penalties, as if the debtor or offender were the lawful owner. 10 An. c. 19. f. 20.

xiv. *Spirituous liquors.*

So far as running of brandy and other spirituous liquors falleth in with the running of other uncustomed goods; see the first part of this title, concerning the **Customs in general.**

1. By the severall acts an excise is laid on every gallon of spiri- Duty on impor-
tuous liquors imported (over and above the customs) as follows; tation.
viz.

Single brandy, spirits, or *aqua vitæ*, 4 s. 8 d. Double brandy, spirits, or *aqua vitæ*, 8 s. 8 d.

Which shall be raised as the duties on other excisable liquors. 12 C. 2. c. 23. 12 C. 2. c. 24. 4 & 5 W. c. 3. 6 W. c. 20. 4 An. c. 6. 6 G. 2. c. 17.

Rum, in the whole, 4 s. 1 d.

Arrack from the *British* colonies in the *East Indies*, the same as for brandy and foreign spirits imported.

2. And if any person shall land any *French* brandy before the Landing without
duty be paid or secured, or without licence from the proper officer duty paid.
so to do; he, and every person aiding therein, or concealing the same when landed, shall not only forfeit the same, but also double value. 1 An. f. 2. c. 14.

And if any officer of the customs or excise shall connive thereat; he shall be incapable to hold any office in the revenue, and forfeit 500 l. S. 2.

3. And the officers of excise may go on board any ship or ves- Excise officers
sel, and search in like manner as the officers of the customs may may go on board.
do, for any excisable liquors, and seize all such as shall be forfeit-

ed, and such as shall be unshipped before entry and payment of the duties, together with the casks and other package. 11 G. c. 30. *f.* 1.

Warrant to search.

4. And if any officer of the excise have cause to suspect, that any foreign spirits shall be fraudulently concealed in any place, entered or not entered, if it is within the bills of mortality, then on oath made before two commissioners, if elsewhere, before one justice, where he suspects them to be concealed, setting forth the ground of his suspicion; he or they may by special warrant authorize such officer by day or night, but if in the night in presence of a constable, to enter, seize, and carry away the same as forfeited, together with the casks or vessels: and if any person shall obstruct such officer, he shall forfeit 100*l.* 11 G. c. 30. *f.* 2.

Who only may seize.

5. And by a general clause in the 8 G. c. 18. All brandy, arrack, rum, spirits, and strong waters, *British* or foreign, and all foreign excisable liquors forfeited, together with the casks or other package, may be seized by any officer of the customs or excise, or persons deputed by warrant from the lord treasurer, or under treasurer, or by special commission under the great or privy seal, and no other person. S. 24.

Obstructing the officer.

6. And if any person shall obstruct any officer of the customs or excise, in seizing or securing any of the said liquors, or endeavour to rescue them after seizure, or shall after seizure slave, or otherwise damage any cask, or vessel; he shall forfeit 40*l.* 8 G. c. 18. *f.* 25.

Notice to be given of seizure.

7. But no person shall be intitled to any reward given on such seizure, unless he give notice to the next officer of excise, or to the supervisor, in 48 hours; who shall, on such notice, take an account of the species and quantity; nor shall such goods be afterwards removed without a permit from such officer of excise, on pain of being resealed. 12 G. c. 28. *f.* 6.

In what vessels to be imported.

8. If any brandy or spirits be imported in any vessel of the burden of 40 tons or under (except for the use of the seamen on board, not exceeding one gallon for each); such vessel with her tackle, and also the spirits, or the value thereof, shall be forfeited, and may be seized by any officer of the customs, and prosecuted in the courts at *Westminster*. 6 G. c. 21. *f.* 29. 8 G. c. 18. *f.* 1, 2.

Ships hovering near the coast.

9. And where any vessel of 50 tons or under, being in part or fully laden with brandy, shall be at anchor, or within two leagues from the shoar, and not proceeding on her voyage, wind and weather permitting; the commander of any man of war or armed sloop appointed for the guard of the coasts, or the commander of any sloop or vessel in the service of the customs, may compel the master to come into port; and the same shall be liable in all cases as ships hovering within the limits of any port. 6 G. c. 21. *f.* 31. And if the master, purser, or other person having charge of the vessel, shall suffer any brandy (or other uncustomed goods) to be put out of the ship, into any hoy, lighter, boat, or bottom, to be laid on land; he shall, besides the other penalties, suffer 6 months imprisonment. 6 G. c. 21. *f.* 32.

And

And by the 9 G. 2. c. 35. Where *any* vessel coming from foreign parts, and having on board any foreign brandy or spirits, in casks under 6 gallons (except only for the use of the seamen, not exceeding 2 gallons each) shall be found at anchor, or hovering within two leagues of the shore, or be within the limits of any port, and not proceeding on her voyage, wind and weather permitting; all such spirits, with the casks and other package, or the value thereof, shall be forfeited (whether bulk shall have been broken or not); and the same may be seized, or the value thereof sued for by the officers. S. 22.

10. No brandy shall be imported in any vessel not containing 60 gallons at the least; on pain of forfeiting the same, or the value. 4 W. c. 5. s. 8. In what casks to be imported.

11. All rum or spirits of the growth or manufacture of the *British* sugar colonies (imported directly from thence) on entry made, and before payment of the duty, may be landed and put into warehouses, provided at the charge of the proprietor or importer, and approved of by the commissioners; the proprietor or importer first giving bond for payment of the duty, if it be sold within 6 months; and if it be not sold in that time, then to pay the duty at the end of 6 months, according to the gage taken at the time of landing and lodging in the warehouse. 15 G. 2. c. 25. s. 1. Rum to be warehoused on importation.

And if any rum or spirits be landed, before entry at the custom house and with the collector of excise, and the duties secured, or without warrant for landing, or without the presence of an excise officer; the same shall be forfeited, or the value thereof. S. 3.

And before it be landed and lodged in the warehouse, a mark shall be set upon every cask, mentioning the quantity, and the proprietor or importer; and the warehouse keeper and excise officer shall each keep a book, and enter the particulars carried in or out, and when, and for whose use delivered; and every 6 months, or oftner if required, transmit an account thereof in writing, and on oath, to the commissioners of excise, who shall in one month examine the same: and if any rum or spirits shall be delivered contrary to this act, the warehouse keeper or officer offending shall be disabled from holding any publick employment, and forfeit 100 l. S. 4.

And the rum or spirits may be delivered out of the warehouse, on payment of the excise, and on producing to the warehouse keeper, and the excise officer attending the warehouse, a certificate of such payment; and the warehouse keeper shall give a permit therewith, signed by the excise officer, to prevent the seizing thereof. S. 5.

But no proprietor, importer, or buyer, shall receive out of the warehouse less than one vessel of 20 gallons, unless for the use of seamen in a voyage. S. 6.

And the proprietor or importer may fix a lock on the warehouse and keep the key; and the excise officer may put on another, and keep the key; and the proprietor or importer may in presence of the warehouse keeper, or excise officer, at all reasonable times, view, and take out as aforesaid. S. 7.

And

Excise. (*Spirituous liquors.*)

Duty on home spirits.

And if any rum or spirits remain in the warehouse above 6 months, without paying the duty, the commissioners of excise may sell them by auction, and pay themselves the duty and charges, rendering the overplus to the proprietor or importer. S. 9.

12. For every gallon of spirits made of imported wine or cyder, shall be paid in the whole the sum of 1 s. 3 d.

For every gallon of strong waters or *aqua vitæ*, made of any other materials, 7 d. $\frac{1}{2}$.

If from foreign or from home materials mixed with foreign; then a further duty of 6 d.

If from brewers wash or tilts, 5 d. $\frac{1}{2}$.

If from drink brewed of malted corn, 5 d. $\frac{1}{2}$.

If from other *British* materials, or any mixture therewith 5 d.

For every gallon of low wines or spirits of the first extraction, made from foreign materials, 1 s. 7 d.

From brewers wash or tilts, 1 s. 4 d.

From drink of malt, 5 d.

From any other *English* materials, 7 d.

But low wines or spirits of the first extraction drawn from melasses only, shall be liable only to 1 s. a gallon; and all spirits from low wines, or spirits of the first extraction, drawn from melasses only, shall be chargeable with 6 d. a gallon. 19 G. 2. c. 12. s. 37.

Note; All spirits drawn by any distiller from any mixture of spirits with any kind of wash or other liquor (except common water) shall be deemed low wines, and chargeable with the duties imposed on low wines drawn from foreign materials. 10 & 11 W. c. 4. s. 9.

Concerning distillers.

13. Any person who shall set up any work or office for that purpose, and thereof shall give notice to the commissioners of excise in ten days, may distill for sale, or to be retailed, any low wines or spirits from drink brewed from malted corn or cyder, and rectify and refine any such spirits of their own making only, paying duties and subject to the same regulations as other distillers. 8 & 9 W. c. 19. s. 13.

And by the 12 An. st. 2. c. 3. Any person may distill brandy or spirits made from *British* malt or cyder, altho' he hath not served 7 years apprenticeship. S. 9.

And by the 9 G. 2. c. 23. Any person who hath exercised the business of distillation for 7 years, or hath served, or on Mar. 25. 1736, were serving an apprenticeship in the same, may follow any other trade or business in any city, town, or place. S. 21.

Notice of houses and vessels.

14. No common distiller or maker of low wines, spirits, or strong waters, for sale or exportation, shall set up any tun, cask, washbatch, copper, still, or other vessel, for making or keeping any worts, wash, low wines, spirits, or strong waters, nor alter or enlarge the same, nor have any of them private or concealed, or any private warehouse, storehouse, cellar, or other place for making or keeping any the said liquors, without first giving notice at the next office of excise; on pain of 20 l. and he in whose occupation any of the same shall be, shall forfeit 50 l. 8 & 9 W. c. 19. s. 10.

And

And every person making or keeping any wash, cyder or other materials fit for distillation, and having in his possession any still or stills containing 20 gallons or upwards ; shall be deemed a common distiller for sale. S. 11.

And if any officer of excise shall have cause to suspect any such private still, back, or other vessel, spirits, low wines, wash or other materials prepared for distillation, to be set up or kept in any place, and shall make affidavit before a justice of the peace, and therein declare the grounds of his suspicion ; he may, in the day time, and in presence of a constable, by warrant from such justice to be directed to such officer, break open the door or any part of such suspected house or place, and enter, and seize the same, and detain them there ; and if they shall not in 20 days be claimed by the owner, they shall be forfeited, and sold at the next general day of sale ; and if they be claimed in 20 days, the person claiming shall forfeit for every warehouse or other place, in which any such still, back, or other vessel shall be found, and also for every such still, back, and other vessel found therein, 200*l.* 10 & 11 *W. c. 4. f. 7.* And by the 10 & 11 *W. c. 21.* he shall incur this forfeiture, whether he shall make any such claim or not. S. 23.

But if on breaking open any such door or house, no such private back, still, or other vessel, spirits, low wines, wash, or other materials for distillation, shall be found, the officer shall make good the house or place so broken up, or make satisfaction to the owner to be adjudged by the two next justices (12.); or the party injured may bring his action for the damages ; and the same shall be paid by the commissioners out of the revenue of excise ; and if any person shall obstruct such officer, he shall forfeit 200*l.* 10 & 11 *W. c. 4. f. 8.*

15. Every distiller shall ten days before he distills or makes any spirituous liquors, make entry at the next office of excise, of every still and other vessel which he shall make use of for brewing, distilling, working, making, laying, or keeping any worts, wash, low wines, spirits, or strong waters ; and also of the vessels used for brewing or keeping of the after runnings or feints from the second extraction (which last mentioned vessels shall not at any one time exceed two in number), and also of all such new utensils as they shall make use of for the purposes aforesaid, on pain of 50*l.* for every such still or other vessel, used and not entred : And the distiller shall shew to the officer every still or other vessel entred, and the officer shall mark the same with a particular and durable mark ; and every vessel used by such distiller without being so shewn or marked, shall be deemed a vessel or utensil of which no entry has been made ; and if any person shall rub out or deface such mark, he shall forfeit 20*l.* 24 *G. 2. c. 40. f. 22.* Vessels to be marked.

16. No distiller shall have any private pipe or stop cock, or other conveyance, by which any wash or other liquors fit for distillation may be conveyed from one back or vessel to another, or from any such back or vessel to his still, or into any other place, nor shall have any hole in any back or washbatch, by which any wash Private cocks and pipes.

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wash or other liquor fit for distillation may be conveyed into or out of the same; on pain of 100 *l.* 10 & 11 *W. c. 4. s. 3.*

And the excise officer in the day time, and in presence of a constable, on request made and cause declared, may break up the ground in any distilling house, or the ground near adjoining, or any wall, partition, or other place, to search; and on finding such pipe or other conveyance, may break up the ground, house, wall, partition, or other place, thro' or into which any such pipe or other conveyance shall lead, and may break up or cut any such pipe or other conveyance, and may turn any cock to try whether such pipe may convey any wash or other liquor. *S. 4.*

And if no such pipe or private conveyance be found, the officer shall make good the ground, wall, house, or other place, or make reasonable satisfaction to the owner, to be adjudged by the two next justices (1 & 2); or the party injured may bring his action for damages: the same to be paid by the commissioners out of the revenue of excise. And if any person obstruct such officer, he shall forfeit 100 *l.* *S. 5.*

But any distiller may use any pipe, stop cock, or other conveyance above ground, in open view, from one end to the other, for letting his wash out of the coolers into his backs or washbatches, and for conveying the wash or worts, out of the back or washbatch into the still. *S. 6.*

Notice of taking
in materials.

17. The distiller, within the bills, shall 24 hours at least, and elsewhere 48 hours, before he receive any quantity of wine, cyder, sugar, water, or any kind of fermented wash, into his custody, give notice to the officer of excise, of the quantity and species, and when he intends to receive the same; on pain of 50 *l.* 24 *G. 2. c. 40. s. 24.*

And by the yearly malt acts, every distiller who shall receive any quantity of cyder or perry into his custody shall give notice in writing to the officer under whose survey he shall reside, 48 hours before he shall begin to put any of the same into the still, to be drawn into low wines or spirits; and if he shall not give such notice, or shall dispose of any quantity thereof otherwise than by distillation, he shall forfeit 5 *l.* 26 *G. 2. c. 1. s. 12.*

Officer to enter
and survey.

18. The excise officers by day or by night (but if in the night, in presence of a constable) may enter into all houses and places made use of by distillers or dealers in the said liquors, and by tasting, gaging, or otherwise, may take an account of the quantity and quality; and if such person shall obstruct the officer, he shall forfeit 50 *l.* 6 *G. c. 21. s. 14.*

Officer may take
a sample.

19. And the officer may take a sample of the low wines or spirits, and of the feints and spent wash, paying for such spirits or low wines after the rate of 10 *s.* a gallon, and for the feints and spent wash 1 *s.* a gallon; and if any distiller, his workman or servant, shall refuse to permit him to take such samples, or shall obstruct him in taking thereof, he shall forfeit 50 *l.* 24 *G. 2. c. 40. s. 23.*

Concealing from
the gager.

20. If the distiller or maker shall conceal any the said liquors from sight of the gager, he shall forfeit 5 *s.* a gallon. 3 *W. c. 15. s. 2.*

21. The officer may keep an account of the several sorts of wash which shall be found by him in the hands of a distiller, and upon any decrease of such wash brewed or made from malted corn or corn unmalted, may charge such distiller with so much low wines or spirits of the first extraction as one fourth part of the same wash so decreased shall amount unto; and also with so much proof spirits or spirits of the second extraction, as three fifth parts of the said low wines so charged shall amount unto: and also upon any decrease of wash made from cyder or perry, may charge such distiller upon whom such decrease shall be found, with so much low wines or spirits of the first extraction, as one fifth part of the same wash so decreased shall amount unto; and likewise with so much proof spirits, or spirits of the second extraction, as one half part of the same low wines or spirits of the second extraction shall amount unto. 4 An. c. 12. s. 4.

Officer to charge for materials missing.

22. No distiller shall deliver or carry out any low wines, spirits, or *aqua vitæ*, to any of their customers, in cask, or by the gallon, without notice thereof first given to the officer of excise, unless from Sep. 29. to Mar. 25. yearly, between 5 in the morning and 8 in the evening, and from Mar. 25. to Sep. 29. yearly, between 3 in the morning and 9 in the evening; on pain of 10 l. 7 s. 8 d. W. c. 30. s. 15.

Carrying out of the still house.

23. Every person who shall retail less than two gallons, shall ten days before make entry in writing of all warehouses, shops, cellars, or other places by him intended to be used, at the next excise office; and of all spirituuous liquors therein: on pain of 20 l. for every place, and 40 s. for every gallon not entred, and also the liquors and casks. 9 G. 2. c. 23. s. 7.

Retailers houses to be entred.

24. And no spirituuous liquors shall be brought into any such warehouse or other place, without first giving notice to the officer of excise; and leaving with him an authentic certificate, that all the duties are paid, or that they have been condemned as forfeited, and expressing the quantity and quality, the name of the seller, and where the duties were paid, or the liquors condemned; on pain of 20 l. and the liquors and casks. 9 G. 2. c. 23. s. 7.

Retailer to give notice of bringing in.

25. No foreign brandy or spirits, altho' under one gallon, shall be received into the custody of any retailer, without a permit signifying that the duties were paid, or that it had been condemned; on pain of forfeiting the same, and the vessel. 8 G. c. 18. s. 13.

Permit on bringing in.

26. All dealers in foreign brandy or spirits, who shall receive into their custody *British* spirits, shall keep the same in separate cellars or other places, from their foreign brandy or spirits; on pain of 10 s. for every gallon of *British* spirits found in the same place with the foreign spirits, together with the casks in which the said *British* spirits shall be found. 8 G. c. 18. s. 11.

British to be kept separate from foreign spirits.

27. No retailer shall make any increase of the liquors, after they have been taken account of by the officer, by any private addition thereto of water or other liquor; on pain of 40 s. a gallon, and the liquors so mixed shall be seized and forfeited. 9 G. 2. c. 23. s. 8.

Retailer increasing the liquors.

And

Excise. (*Spirituous liquors.*)

And if the officer of excise shall find any increase of *foreign* spirits, over and above the quantity which he found at any dealers on the last survey, such increase shall be deemed to be made by foreign spirits for which no duty was paid; and so much as shall be found increased, shall together with the cask be forfeited, unless the owner make it appear, that the increase was made by mixing therewith in the presence of the officer of the division, some of his stock of *British* spirits whereof the officer had taken an account, or by foreign spirits brought with a permit, or that it had been condemned and brought in on due notice given to the officer. 8 G. c. 18. f. 12.

Retailer concealing.

28. The officers at all times by day and night (but if in the night, in presence of a constable, oath being first made before a justice dwelling near of a probable cause of suspecting a concealment) may enter into all such warehouses, shops, or other places, and by tasting, gaging, or otherwise, take an account of the quantity and quality; and if any such retailer shall hinder the officer, he shall forfeit 50 l. 9 G. 2. c. 23. f. 9.

None to be sold but in entred places.

29. And no such liquors shall be sold, but in such warehouse, shop, cellar, or other place, so entred; on pain of 40 s. a gallon. 6 G. c. 21. f. 15.

And by the 11 G. c. 30. No *arrack*, whether *British* or foreign, shall be offered to sale, either by wholesale or retail, but in an entred place; on pain of forfeiting the same, with the casks or other vessels, besides the said penalty of 40 s. a gallon. 11 G. c. 30. f. 3.

Who shall be deemed a seller and dealer.

30. Every person who shall have in his custody above 63 gallons, shall be deemed a seller and dealer in such liquors. 6 G. c. 21. f. 18.

Licence for retailing.

31. No person shall retail any distilled spirituous liquors or strong waters, mixed or unmixed, without a licence taken out ten days before, for which he shall pay 40 s. yearly; if within the bills, from two commissioners of excise; elsewhere, from the collectors and supervisors within their respective districts. 16 G. 2. c. 8. f. 8. 24 G. 2. c. 40. f. 9.

And every person who shall retail spirituous liquors mixed or unmixed, to be drank in any quantity whatsoever, in any place to him belonging; or shall retail or send the same abroad in less quantity than two gallons, shall be deemed a *retailer*. 17 G. 2. c. 17. f. 20.

Who only shall have licences.

32. And no such licence shall be granted, except to such persons only who keep taverns, victualling houses, inns, coffee houses, or alehouses; and all other licences shall be void; and if any licensed person shall exercise the trade of a distiller, grocer, or chandler, or keep a brandy shop for sale of spirituous liquors, the licence shall be void. 17 G. 2. c. 17. f. 19.

And no licence shall be granted within the limits of the head office of excise in *London*, but to such as occupy tenements of 10 l. a year, and pay parish rates for the same; or in places where the occupiers of houses are not rated to the church and poor, then to such persons as pay rent of 12 l. a year, and not otherwise; nor to persons in any other part of the kingdom, but such as pay to

to the church and poor: and no licence shall be of any avail longer than he shall be so qualified. 24 G. 2. c. 40. f. 12. 26 G. 2. c. 13. f. 9.

33. And such persons also shall first be licensed to sell ale or spirituous liquors, by two or more justices of the peace. 16 G. 2. c. 8. f. 11. To be first licensed to sell ale.

And the justices of the peace, and other officers, shall have the same jurisdiction over such retailers of spirituous liquors, as they have over alehousekeepers. 12 & 13 W. c. 11. f. 18. 2 G. 2. c. 28. f. 10.

34. And no licence shall empower any person to sell spirituous liquors in any place, except in the house or places thereto belonging, wherein they shall inhabit at the time of granting the licence. 17 G. 2. c. 17. f. 22. To be licensed only where they dwell.

35. Persons retailing without licence shall forfeit 10 l. and on non-payment when demanded, one justice on oath of such neglect shall commit the offender to the house of correction, to be kept to hard labour for two months, or till paid. 16 G. 2. c. 8. f. 9. Penalty of selling without licence.

And the said penalty shall in no case be mitigated below the sum of 5 l. 24 G. 2. c. 40. f. 11. 26 G. 2. c. 13. f. 8.

And the justices may, if they think proper, instead of levying the penalty, commit the offender to the house of correction, to be kept to hard labour for two months; and the person so committed shall before his discharge, be stript naked from the middle upwards, and whipt until his body be bloody. 17 G. 2. c. 17. f. 18.

And also all the distilled spirituous liquors that shall be then, or at any time within 6 months after conviction, found in his custody, house, or other place occupied therewith, whether it be in his own occupation or not, shall by warrant of the said commissioners, or of one justice, be seized, and staved, or otherwise destroyed: And any peace or parish officer, authorized by such warrant, may at any time in six months after conviction enter such places, and break open doors, if not opened on demand. And if any person shall offend again in like manner, the commissioners or justices before whom he shall be convicted of such subsequent offence, may inflict the penalties by any former law to be inflicted for such offence, and also commit the offender to the house of correction, to be kept to hard labour not exceeding 3 months, and also (if they shall think fit) order him to be whipt. And being convicted of a third offence, it shall be deemed felony, and the sessions may transport him for any time not exceeding 7 years. 24 G. 2. c. 40. f. 13.

And the conviction shall be in this form, or to the like effect, viz.

Middlesex. A. B. is convicted on his own confession (or on the oath of A. W.) of having sold strong waters in the parish of _____ in this county, on the _____ day of _____ without being duly licensed thereto: This is the first, second, or third conviction. Given under my hand and seal &c.

And

And the commissioners, or one justice, on oath of any offence against this act, or any other act for regulating the retailing of spirituous liquors, may grant a warrant to any of the peace officers, or other parish officers, to enter and search the houses and other places, where the offence shall be sworn to have been committed, or in the occupation of the persons sworn to be guilty thereof, and they may break open the doors if not opened on demand, and seize all such distilled spirituous liquors as they shall there find, and detain the same, till the offence shall be heard and determined; and if the offender be convicted, the liquors shall be forthwith staved; and if he be not convicted, the same shall be restored. 24 G. 2. c. 40. s. 14.

Hawking in the streets.

36. No person shall hawk, sell, or expose to sale any spirituous liquors about the streets, highways, or fields, in any wheelbarrow or basket, or on the water in any boat, or in any other manner; or shall sell or expose the same to sale, on any bulk, stall, or shed, or any other place other than as above is allowed; on pain of 10*l.* And one justice, on his own view, or confession, or proof of one witness, may convict him; whereupon he shall immediately pay the 10*l.* to the churchwardens and overseers: and on refusal or neglect, the justice shall commit him to the house of correction to be kept to hard labour for two months to be reckoned from the day of commitment; and he shall not be discharged till he pay the sum, or till the two months be expired. If there is no informer, it shall be wholly to the use of the poor; otherwise, half to the informer, and half to the poor. 9 G. 2. c. 23. s. 13.

And moreover, he shall before his discharge from the house of correction, be stripped naked from the middle upwards, and whipt until his body be bloody. 10 G. 2. c. 17. s. 9.

And any one justice, on information on oath against such person, may (without any previous summons) issue his warrant for apprehending and bringing him before some justice where the offence was committed. 11 G. 2. c. 26. s. 4.

And any person may seize and detain him, until he may give notice to the constable, churchwarden, overseer, or other peace or parish officer; who shall carry the person so seized and detained, before a justice of the peace, who shall proceed thereon as in case where he is brought by the constable. 11 G. 2. c. 26. s. 5.

Occupier of the house shall be liable.

37. If any less quantity than two gallons shall be sold or delivered in any clandestine manner, to any person, in any house, outhouse, stable, barn, shed, or other place, part of or belonging to any house or farm; in such case, the occupier, or occupiers (if more than one) consenting thereto, shall be deemed retailers, and forfeit as selling without licence. 11 G. 2. c. 26. s. 1.

Persons giving away spirituous liquors.

38. Persons giving away spirituous liquors, to servants or apprentices fetching goods from their shops, shall be deemed retailers. 9 G. 2. c. 23. s. 16.

Paying wages in spirituous liquors.

39. If any master or other person shall agree to pay workman, servant, or labourer, or other person employed by him or for him, so much money for wages, and so much spirituous liquors, as together with the money shall amount to the value of the wages

wages usually paid in like cases; or shall set off or deduct any part of the wages, for any spirituous liquors; he shall be deemed a retailer, and forfeit 20 *l.* over and above the other penalties, and such servant shall be intitled to his whole wages. 9 G. 2.

c. 23. *f.* 11.

40. But nothing herein shall extend to physicians or apothecaries selling the same as medicines. 9 G. 2. c. 23. *f.* 12. 16 G. 2. c. 8. *f.* 12. Apothecaries selling spirituous liquors.

41. No licence shall be granted for retailing of any spirituous liquors, within any gaol, prison, house of correction, workhouse, or house of entertainment for parish poor; and if any keeper of such prison or house shall sell, use, lend, or give away, or knowingly suffer any spirituous liquors or strong waters to be sold, used, lent, or given away in any such gaols or houses, or brought into the same, except such as shall be prescribed by the direction of a regular physician, surgeon, or apothecary, from the shop of some regular apothecary, — he shall forfeit 100 *l.* half to the king, and half (with full costs) to him who shall sue in the courts at *Westminster*. And if any such person shall offend again in like manner, and be a second time convicted; he shall forfeit his office. 24 G. 2. c. 40. *f.* 17. Selling in gaols or workhouses.

And any justice, on information on oath that spirituous liquors or strong waters are kept and disposed of in any such prison or other place, may enter and search, or impower by warrant any constable to search for and seize all such liquors as shall be found (except such as are directed to be used medicinally) and to seize and destroy the same. S. 18.

And if any person shall bring, or endeavour to bring any such liquors (except in the way of medicine as before mentioned) into any such gaol or other place, the gaoler or his servants may apprehend and carry such offender before any justice of the peace, who shall hear and determine such offence in a summary way; and if by the oath of one witness, or otherwise, such person shall be convicted, he shall be committed to prison or to the house of correction, not exceeding 3 months, unless he shall immediately pay down such fine not exceeding 20 *l.* and not less than 10 *l.* as the justice shall impose, to be paid half to the informer, and half to the poor of such prison or workhouse. S. 19.

And the gaoler, keeper, master, or other officer, shall procure a copy of the three preceding clauses, to be printed or fairly written, and hung up in one of the most publick places of his gaol, house of correction, or workhouse aforesaid, and renew the same from time to time, so that it be always kept fair and legible; on pain of 40 *s.* by warrant of one justice, on oath of one witness. And any justice may enter and demand a sight of it, and if it shall not be shewn to him hung up in some publick place fair and legible; he shall immediately convict such person, and so from time to time as often as he shall think fit: half to be to the informer, and half (or the whole if there be no informer) to the poor of such gaol or other place. S. 20.

42. No person shall recover any debt on account of spirituous liquors, unless it shall *bona fide* have been contracted at one time Recovering debt for spirituous liquors.

time to the amount of 20 s. or upwards; nor shall any particular article in any account be allowed, where the liquors delivered at one time, shall not amount to the full value of 20 s. and where no part of the liquors so sold shall be agreed to be returned; and if any retailer, with or without a licence, shall take any pawn by way of security for payment of any money for such liquors, he shall forfeit 40 s. by warrant of one justice, half to the poor, and half to the informer; and the owner shall have such remedy for recovering such pawn, as if it had never been pledged. 24 G. 2. c. 40. s. 16.

Distiller delivering to unlicensed retailer.

43. If any distiller or other person shall knowingly sell or deliver any distilled spirituous liquors, that the same may be unlawfully retailed, or to any unlicensed retailer; he shall forfeit 10 l. and treble value of the liquors, half to the king, and half to him that shall sue in the courts at *Westminster*. And if any person guilty of retailing such liquors, shall discover the distiller or person who knowingly supplied him therewith, and prosecute him to conviction, he shall be intitled to his share of the penalty, and indemnified against all penalties incurred by him before that time, for selling spirituous liquors without licence. 24 G. 2. c. 40. s. 15.

Riotously rescuing offenders, or assaulting informers.

44. If any persons to the number of 5 or more, shall in a tumultuous and riotous manner assemble to rescue any offenders against any act relating to spirituous liquors, or for licensing the retailers thereof, or to assault any person who shall have given or is about to give any information against, or shall have discovered or given evidence against, or shall seize or bring to justice any offender; he, his aiders and abettors, shall be guilty of felony, and transported for seven years. 24 G. 2. c. 40. s. 32.

Permit for removal after sale.

45. Where any such liquors shall be sold in any such entred place, the officer shall on request of the feller (without fee) give the buyer a certificate signed by him, expressing the quantity, the name of the buyer and feller, and that the duty hath been paid, or that it hath been condemned as forfeited. 6 G. c. 21. s. 16.

And no such liquor, exceeding one gallon, shall be carried without such certificate or permit; on pain of forfeiting the same with the casks and vessels. 8. 17.

And if any person shall take out a permit, and not remove the liquors accordingly, nor return the permit; he shall forfeit treble value: And if there appears not a sufficient decrease in the stock, to answer the quantity in the permit, the officer may seize so much as will answer the quantity. But no person shall receive a permit, without direction in writing of the person (or his servant) from whose stock the goods are to be removed; on pain of 50 l. and in default of payment, 3 months imprisonment. 11 G. c. 30. s. 10.

Selling without a permit, or pedlars with one.

46. If any person shall offer any spirituous liquors to sale, not having a permit; or if any pedlar, or other trading person, going from town to town, or other mens houses, and trading either on foot, or with any horse or other cattle, or otherwise, shall offer any such liquors to sale, altho' he have a permit: the person to whom they are offered to sale, may seize and detain such liquors, and carry them to the next warehouse belonging to the

the customs or excise, and bring the person before a justice, to be by him committed to prison, and prosecuted for the penalties incurred for such offence; and such liquors may be prosecuted in the name of the person who stopped or seized the same, in like manner as if they had been seized by an officer. 9 G. 2. c. 35. f. 20.

47. When any officer of the customs shall neglect to seize and prosecute any vessel, boat, horses, or other cattle or carriage, forfeited for running of brandy, and shall be convicted thereof on his appearance or default, by oath of one witness or confession; he shall forfeit 50 l. 6 G. 2. c. 17. f. 10. Officer neglecting to seize.

48. If any constable or other peace officer, shall refuse or neglect on notice, or his own view, to be aiding in the execution of this, or of the acts of 9 G. 2. or 10 G. 2. herein mentioned; he shall, on conviction by the oath of one witness, forfeit 20 l. 11 G. 2. c. 26. f. 7. Constable neglecting his duty.

49. All low wines or spirits carried coastwise, without a certificate from the officer of excise where they were made, that the duty hath been paid, shall be forfeited, and seized by the officers where they shall be brought in. 3 G. c. 4. f. 17. Carrying coastwise.

50. It is generally provided by the several statutes, that home spirits may be exported, and a drawback of the duties allowed thereupon. Exportation.

But by the 6 G. 2. c. 17. for spirits drawn from *British* corn, there shall be allowed a drawback by the excise officers at the port of shipping, of 4 l. 18 s. a ton, in full of all drawbacks: Except that for every ton of spirits drawn from barley malt, or other corn, there shall be paid by the officers of the customs, when barley is 24 s. a quarter, or under, 1 l. 10 s. in like manner as for corn exported. S. 7, 8.

51. All the penalties, not herein otherwise directed, shall be sued for and mitigated as by the laws of excise, or in the courts at *Westminster*; and be half to the king, and half to the informer or prosecutor. 24 G. 2. c. 40. f. 33. Power of the justices.

52. And where the retailer is sent to the house of correction, the commissioners shall cause rewards, not exceeding 5 l. to be paid to the informers. 17 G. 2. c. 17. f. 21. Reward where no penalty is levied.

53. No information shall be brought against a distiller, for any false or misentry, or offence, but within 3 months after the offence committed; and notice thereof shall be given to the party in writing, or left at his dwelling house, within a week after laying the information. 12 & 13 W. c. 11. f. 17. Limitation of actions.

54. And the commissioners shall cause all foreign excisable liquors, seized for non-payment of duty, or for being prohibited to be imported, to be publickly sold, after condemnation, to the best bidder, at such places as they shall think proper. 12 G. c. 28. f. 1. Sale after condemnation.

55. And all stills, worms, and still heads, and other vessels and utensils for distilling, by whomsoever they shall be claimed, shall be liable to arrears. 7 & 8 W. c. 30. f. 13. Utensils liable.

56. The justices within the limits of the head office of excise in *London*, shall once in every month transmit to the clerk of the peace, Conviction to be kept amongst the records of the Sessions.

peace, a certificate of all persons convicted before them for any offences against this or any former act relating to spirituous liquors, or for licensing the retailers thereof; who shall keep and enter the same among the records of the court: which certificate shall be evidence upon any information relating to spirituous liquors. 24 G. 2. c. 40. s. 21.

xv. Starch and hair powder.

Duty on starch imported.

1. By the 10 *An. c. 26.* and 12 *An. s. 2. c. 9.* For all starch imported shall be paid 4*d.* a pound, over and above all other duties.

And all hair powder made of starch, or other powder that will serve for the same uses as starch, shall on importation pay the same duties, as foreign starch imported. 3 *G. c. 4. s. 14.*

Duty on home starch.

2. And by the said acts, for all starch made in the kingdom, a duty shall be paid of 3*d.* a pound.

Officers for these duties.

3. For the management of which duties on home starch, the commissioners of the treasury shall appoint commissioners, who shall substitute inferior officers. 10 *An. c. 26. s. 9.*

Places of making to be entered.

4. And no maker of starch shall set up or use any workhouse, storehouse, room, or other place, for making, drying, or keeping of starch, or for the converting or keeping any flour, meal or other materials proper to be made into starch, or use any vat, trough, box, stove, utensil, or other vessel for making of starch; without notice thereof being first given in writing at the next office for the said duties; on pain of 50*l.* 10 *An. c. 26. s. 10.*

And all flour, meal, and other materials, found in any private workhouse, or other place, and all private utensils and vessels for making or keeping starch, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof. 10 *An. c. 26. s. 22.*

Officers to enter and survey.

5. And the officers shall at all times by day or night, and if in the night in presence of a constable, be permitted on request to enter the house, workhouse, warehouse, or other place used by any maker of starch; and by gaging or weighing the starch, and gaging the boxes and other utensils, or otherwise, to take an account of the quantity; and thereof shall make return in writing to the commissioners, leaving a true copy, if demanded, under his hand, with the maker; and if he shall not leave such copy (after demand in writing, 12 *G. c. 28. s. 30.*) he shall forfeit 40*s.* 10 *An. c. 26. s. 14.*

Obstructing the officer.

6. And if the maker shall obstruct such officer in the execution of his duty, he shall forfeit 20*l.* 10 *An. c. 26. s. 18.*

How to be boxed in making.

7. The maker shall use regular, square, or oblong boxes only, for boxing and draining his green starch, before it is dried in the stove; on pain of 10*l.* 4 *G. 2. c. 14. s. 1.*

Notice of boxing.

8. And he shall, if within the bills, give 12 hours, elsewhere 24 hours notice in writing to the officer, of his intention to put any green starch into such boxes; on pain of 20*l.* And he shall, within two hours after such notice shall have been given, begin to box

box it, and so continue, that the officer may have a gage of the whole; on pain of 20*l*. 4*G. 2. c. 14. f. 1.*

9. And if the charge be made by gaging it before it be dried in the stove; then every box of green starch, or starch before it be dried, containing 57 inches in length, and 10 inches in breadth, and 8 inches in depth, or in the whole 4500 solid inches, shall be esteemed 131 pounds *averdupois*, of starch dried and perfectly made. 1*G. st. 1. c. 2. f. 6.* Gaging in the boxes.

10. And the maker shall keep scales and weights at the place where he makes his starch, and permit and assist the officer to make use thereof; on pain of 10*l*. 10*An. c. 26. f. 16.* Scales and weights.

11. No maker of starch shall (on pain of 20*l*.) remove any starch, of which no account hath been taken by the officer, from the place where it was made; without giving to the officer within the bills 24 hours notice, and elsewhere two days notice. 10*An. c. 26. f. 19.* Removing before surveyed.

And by 4*G. 2. c. 14.* If he shall remove any starch after it is dried, out of the stove or drying place, before it has been weighed and taken account of by the officer; he shall forfeit 50*l*. 8*. 2.*

12. If any officer of the duties upon starch or of the customs, shall have cause to suspect that starch is privately making in any place, or concealed; then upon oath made before any commissioner or justice residing near, setting forth the ground of his suspicion, such commissioner or justice may issue his warrant, to authorize such officer by day or night (but if in the night, in presence of a constable) to enter such suspected place, and seize and carry away the same, with the materials, as forfeited, together with the boxes and other things containing it: and unless the party make it appear that the duty has been paid, he shall forfeit 50*l*. and if any person obstruct the officer, he shall forfeit 100*l*. 4*G. 2. c. 14. f. 4. 23 G. 2. c. 21. f. 34.* Concealing.

13. The officer shall be permitted to take an account of the quantities of flour, meal, and other materials proper to be made into starch, that shall be in the possession of the maker; and if he shall miss any such materials, which he had taken an account of the last time he was there, and shall not on reasonable demand, receive satisfaction what is become thereof, he may charge the maker with such quantity of starch, as such materials so missing in his judgment would reasonably have made, not exceeding 25 pounds weight of starch, for every buthel of such ingredients mixed or unmixed. 10*An. c. 26. f. 17.* Officer to charge for materials missing.

14. The maker shall keep all starch by him made and not surveyed, separate from other starch which hath been surveyed, for 24 hours after making within the bills, and for two days elsewhere, unless it shall be sooner surveyed; on pain of 5*l*. 10*An. c. 26. f. 20.* Starch unsurveyed to be kept separate.

15. The maker within the bills shall monthly, and elsewhere every 6 weeks, make entry in writing at the next office, of all the starch by him made, setting forth the weight, and how much was made at each time; on pain of 50*l*. Which entry shall be on oath of the maker or his chief workman, according to the best of his knowledge and belief, before such officer as shall be ap- Entry of starch made.

pointed by the commissioners within the bills, and elsewhere before the collector and supervisor. 10 An. c. 26. s. 11.

But he shall not be obliged to go further to make entry, than to the next market town. S. 12.

Payment of the duties.

16. The maker within the bills shall within four weeks, and elsewhere within 6 weeks after entry, clear off the duties; on pain of double duty: And no maker, after default in payment, shall sell or deliver out any starch until he hath cleared off the duty; on pain of double value. 10 An. c. 26. s. 13.

Carrying it coastwise.

17. Cocquets granted for shipping starch, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if shipped without such cocquet, it shall be forfeited and seized, together with the package. 23 G. 2. c. 21. s. 29.

Importation and exportation.

18. No starch shall be *imported* otherwise than in some package containing at least 224 pounds of neat starch, and stowed openly in the hold; on pain of being seized and forfeited, together with the package, and the master of the vessel to forfeit 50 l. 23 G. 2. c. 21. s. 27.

But on information brought against such master, he may detain the wages of the mariners, till it be determined; and if it shall appear, that the starch was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner in payment of the forfeiture. 26 G. 2. c. 32. s. 8.

And the officers of excise (in like manner as the officers of the customs) may go on board any vessel, and search for and seize all starch forfeited, together with the package; and they may likewise seize such as before entry and payment of duties, shall be found unshipping or unshipped. 23 G. 2. c. 21. s. 28.

Starch that hath paid the duties may be *exported*; and the duties shall be drawn back. 10 An. c. 26. s. 25, 26, 27.

But no drawback shall be allowed on the exportation of any foreign starch imported. 23 G. 2. c. 21. s. 36.

And the officers of excise or customs may seize any starch or hair powder, with the horses and package, where they have good reason to suspect that it hath been privately made, or imported without payment of duty, or relanded after drawback; and shall in 10 days exhibit an information before three commissioners of excise, or two justices near where the seizure is made; and if the party doth not make it appear that the duty hath been paid it shall be forfeited together with the horses and package, and the offender shall likewise forfeit 5 l. for every hundred weight. 4 G. 2. c. 14. s. 3.

And by the 23 G. 2. c. 21. it is enacted, that the said officers may seize any starch, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe that the same was made in some private work-house, or clandestinely imported, or relanded after drawback: and if the party, at the hearing of the information, shall not make it appear that the duty hath been paid or secured, he shall forfeit 5 l. for

for every 100 pounds weight, and also the goods and package shall be forfeited. S. 30.

And if any foreign starch shall be unshipped, with intention to be laid on land before entry and payment of the duties, or shall be landed again after shipping for exportation on debenture; the same, together with the package, vessels, boats, horses, and other carriages, used in landing or conveying the same, shall be forfeited, and may be seized by any officers of the customs or excise; and the persons from whom the same shall be seized, shall forfeit 5*l.* for every hundred weight. 23 G. 2. c. 21. s. 34.

And if any person shall knowingly harbour or conceal any starch unlawfully imported, or relanded after shipping for exportation upon debenture; he shall, whether he claims any property therein or not, forfeit 50*l.* for every hundred weight, together with the goods and package. 23 G. 2. c. 21. s. 32.

And where any such starch shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of excise in *London*, the officer who made the seizure may cause notice signed by the solicitor of excise, to be affixed at the *Royal Exchange*, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it is out of the said limits, then publick notice shall be given by proclamation, at the next market town, on the market day, next after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof: And the judgment thereon shall not be liable to appeal, nor be removed by *certiorari*. 23 G. 2. c. 21. s. 33.

19. No perfumer, peruke maker, barber, or dealer in hair powder, shall make, use, or offer to sale, any powder made of or mixed with alabaster, talke, plaister of *Paris*, whiting, lime, or other thing of the like nature (sweet scents only excepted); on pain of forfeiting the same, and 50*l.* 12 An. st. 2. c. 9. s. 20.

And by the 4 G. 2. c. 14. If any maker of hair powder, or other such person, shall mix any powder of alabaster, plaister of *Paris*, talke, chalk, whiting, lime, or any other material (rice first made into starch, and sweet scents only excepted) with any starch or powder of starch to be made use of for making of hair powder, and shall make any hair powder with any the said materials, or any other material except starch or powder of starch, or of rice first made into starch, and shall use, sell, or offer to sell any hair powder so mixed or made; he shall forfeit the same, and 20*l.* S. 5.

20. Every maker of hair powder shall make entry in writing at the next excise office, of his place of abode, and of his work-house or other place made use of for making hair powder; on pain of 20*l.* 4 G. 2. c. 14. s. 6.

21. And the officer, in the day time, on his request, may enter places used for making hair powder, and the shops of perfumers, peruke makers, barbers, and other sellers or dealers in hair powder, and examine the same, and carry away samples, paying a reasonable price for the same. 4 G. 2. c. 14. s. 7.

Making of hair powder.

Places of making hair powder to be entred.

Officer to enter the same, as survey.

- And if such starch maker or dealer shall not on request suffer him to enter, and examine, and take samples (on offering to pay the common price); he shall forfeit 20*l.* *Id.* *f.* 9.
- Person having in his possession materials for adulterating hair powder. 22. And if any starch maker, or dealer in hair powder, shall have in his possession, for making, mixing, or counterfeiting hair powder, any alabaster, plaister of paris, talk, chalk, whiting, lime, or other material, besides starch, or powder of starch, or of rice first made into starch; he shall forfeit the same, and 10*l.* 4 *G. 2. c. 14. f. 8.*
- Power of the justices. 23. All the said forfeitures shall be sued for, levied and mitigated, as by the laws of excise, or in the courts at *Westminster*; and be distributed half to the king, and half (and on the 10 *An. c. 26.* half with full costs) to the prosecutor 10 *An. c. 26. f. 29.* 24 *G. 2. c. 40. f. 33.*
- Proof to lie on the claimer. 24. And where any starch shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry were made or not; the proof shall lie on the claimer, and not on the officer. 23 *G. 2. c. 21. f. 34.*
- Appeal. 25. And if the party is not satisfied with any judgment of the justices, on the act of 23 *G. 2. c. 21.* abovementioned, he may appeal to the next quarter sessions (except in the case beforementioned, where no person shall claim the goods seized). *S. 36.*
- Mitigation. 26. And the mitigation on the said act of 23 *G. 2.* shall not reduce the penalty to less than a fourth part, over and above the charges. *S. 37.*
- Utenfils liable. 27. And all starch, materials, and utenfils, in custody of the maker, or of any person to his use, shall be liable to all arrears of the duty, and penalties; and such proceedings may be had thereupon, as if the debtor or offender were the lawful owner. 10 *An. c. 26. f. 23.*

xvi. *Wire.*

- Importing of wire. 1. No foreign embroidery, or gold or silver brocade, thread, lace, fringe, or work made thereof, or of copper, brass, or other inferior metal, or gold or silver wire or plate shall be imported. 15 *G. 2. c. 20. f. 7.* 22 *G. 2. c. 36. f. 1.*
- Duty on home wire. 2. For all gilt wire made in *Great Britain* shall be paid a duty of 8*d.* an ounce; for silver wire 6*d.* an ounce, troy weight. 10 *An. c. 26. f. 46.*
- Officers for these duties. 3. And the commissioners of the treasury shall appoint commissioners for these duties, who shall substitute inferior officers. 10 *An. c. 26. f. 48.*
- Places of making to be entred. 4. And every person who shall draw any gold or silver wire into such wire as is commonly called big wire, shall first give notice in writing at the next office for the said duties, of his name and place of abode, and where he intends to work; on pain of 20*l.* And no refiner, wiredrawer, or other person, shall draw any gold or silver into such big wire, at any place other than some common bar house to be approved of by the commissioners; on pain of 20*l.* 10 *An. c. 26. f. 49.*

And all gilt and silver wire, and bars for making it, which shall be found in any private workhouse, and all private utensils for barring or drawing it, of which notice hath not been given, shall be forfeited and seized, or the value thereof recovered. 10 *An. c. 26. f. 59.*

5. And the officer shall at all times, by day or night, and if in the night in presence of a constable, be permitted on his request to enter the bar house, workhouse, or other place used for making of such wire, and take an account of the weight, and thereof make return in writing to the commissioners, or to whom they shall appoint, leaving a copy thereof, if demanded, with the maker; and if he shall refuse to leave such copy (after demand in writing, 12 *G. c. 28. f. 30.*) he shall forfeit 40*s.* 10 *An. c. 26. f. 52.*

Officer to enter and survey.

6. And if any such maker shall obstruct the officer, in the execution of his office, he shall forfeit 20*l.* 10 *An. c. 26. f. 55.*

Obstructing the officer.

7. And the maker shall keep weights and scales at the place of making the wire, and permit and assist the officer to weigh; on pain of 10*l.* 10 *An. c. 26. f. 54.*

Scales and weights.

8. Every ingot or bar of silver, designed for gilt wire, shall be weighed in the presence of the excise officer, who attends the forge where they are made, before they be covered with gold; and shall be weighed in presence of, and marked by the said officer, after the gold is laid on: and on refusal to admit the officer, the refiner or maker shall forfeit 20*l.* half to the king, and half to him that shall sue. 15 *G. 2. c. 20. f. 8, 9.*

Ingot to be weighed.

9. If the officer's charge be made, by taking the weight of the gold and silver in big wire at the bar house, an allowance of one fifth part shall be made, in consideration of the waste, in reducing the same to small wire. 10 *An. c. 26. f. 53.*

Allowance for waste.

10. No wire drawer shall (on pain of 40*l.*) remove any gilt or silver wire, of which no account hath been taken, from the bar house or place of making, without giving to the officer 24 hours notice. 10 *An. c. 26. f. 56.*

Removing before surveyed.

11. Wire not surveyed shall be kept separate from that which hath been surveyed, for 24 hours after making, unless it shall be sooner surveyed; on pain of 10*l.* 10 *An. c. 26. f. 57.*

Wire unsurveyed to be kept separate.

12. If the maker, or he for whom it is made, shall conceal any wire, or bars of silver prepared for making it; he shall forfeit 20*l.* 10 *An. c. 26. f. 58.*

Concealing.

13. The maker shall once in every month make entry in writing at the next office, of all the wire by him made, setting forth the weight, and kinds, and how much was made in each week; on pain of 100*l.* Which entry shall be made on the oath of the maker, or his chief workman, to the best of his knowledge and belief, to be administered by the officer. 10 *An. c. 26. f. 50.*

Entry of wire made.

14. And the duty shall be cleared off in 6 weeks after entry, on pain of double duty. 10 *An. c. 26. f. 51.*

Payment of the duty.

15. If any person shall export any gold or silver thread, or lace, or fringe made of plate wire spun upon silk, he shall have a drawback after the rate of 5*s.* a pound *auverduois*, of such silver thread, lace, or fringe, and of 6*s.* 8*d.* a pound of such gold thread, lace, or fringe. 10 *An. c. 26. f. 62.*

Exportation.

16. All

Power of the
justices.

16. All the powers of the excise laws shall be in force for managing these duties : and the penalties and forfeitures (not herein otherwise directed) shall be sued for, levied, and mitigated, as by the laws of excise, or in the courts at *Westminster* ; and be employed, half to the use of the king, and half to him that shall inform or sue. 10 *An. c. 26. f. 64.* 24 *G. 2. c. 40. f. 33.*

Utenfils liable.

17. And all such wire, materials, and utenfils, in custody of any maker, or other to his use, shall be liable to the duties and penalties ; and such proceedings may be had thereupon, as if such debtor or offender were the lawful owner. 10. *An. c. 26. f. 60.*

For regulations concerning the true making of gilt and silver wire (which do not belong to this place) see the act of 15 *G. 2. c. 20.*

And for prohibiting the selling or working up of foreign gold or silver lace or thread, see the 22 *G. 2. c. 36.*

Information against an alehousekeeper for arrears.

Westmorland. **B**E it remembred, that this — day of — in the — year of the reign of his majesty king George the second that now is at — in the said county, A. I. gentleman, in his proper person, as well for his said majesty, as for himself, exhibiteth to us A. P. and J. P. esquires, two of his said majesty's justices of the peace for the said county, residing near to the place where the forfeiture herein after mentioned was made, a complaint and information, and thereby informeth us, that at several times between the — day of — and the — day of — both now last past, at — aforesaid in the said county, one A. O. at a common alehouse then and there belonging to and used by him, did brew the several and respective quantities of beer and ale herein aftermentioned ; that is to say, 30 barrels of strong beer and of strong ale, each above 6s. the barrel ; and 60 barrels of small beer, not exceeding 6s. the barrel ; and that the said A. O. at and during the respective time and times of brewing the said beer and ale, and of every part thereof, was and yet is a common alehousekeeper ; and that there did thereby accrue and become due to his said majesty from the said A. O. for the said beer and ale so by him brewed as aforesaid, certain rates, duties, and sums of money, amounting in the whole to the sum of — of lawful money of Great Britain ; which said rates, duties, and sums of money so accrued, or any part thereof, the said A. O. hath not paid or cleared off, to or for the use of his said majesty, within a month next after he, according to the statute in that behalf made, did make, or ought to have made his entry or entries of the said beer and ale so by him there brewed as aforesaid, or of any part thereof, or at any time since ; but the same yet remain wholly due and unpaid, contrary to the form of the statute in such case made and provided ; whereby the said A. O. hath forfeited double the value of the said rates, duties, and sums of money remaining unpaid, as aforesaid ; that is to say, — of like money ; and thereupon the said A. I. who as well for his said majesty, as for himself, exhibiteth this information, prays the judgment of us the said justices in the premisses, and that he have one moiety of the said

said forfeiture, according to the form of the statute in such case made; and that the said A. O. may be summoned to answer the premises before us the said justices.

Summons on the foregoing information.

To Mr. A. O. alehousekeeper.

Westmorland. **W**E J. P. and K. P. esquires, two of his majesty's justices of the peace for the said county of — do hereby give you notice, that A. I. gentleman, hath exhibited before us an information against you for the sum of — being double the value of certain duties of excise of beer and ale by you brewed, the single duties whereof (as he alledgeth) you ought long since to have paid, but have neglected so to do: You are therefore hereby required to appear before us at the house of — at the sign of the — in — in the said county, on the — day of — now next ensuing, at — of the clock of the forenoon of the said day, then and there to answer to the said information. And if you shall neglect so to do, we shall proceed as if you were personally present. And we do further authorize and require Mr. A. E. officer of excise, or any other officer of excise, to serve this our summons, and to attend us at the time and place last mentioned, then and there to make a return thereof to us the said justices. Given under our hands and seals at — in the said county, the — day of — in the — year of the reign of his said majesty king George the second.

Note; The officer who shall serve the summons, ought not to be the informer or prosecutor, for this obvious reason, because that he, being intitled to a share of the forfeiture, is not a proper witness to prove such service; for that would be admitting him to swear for himself in his own cause, which is abhorrent from the nature of our laws.

Information against a maltster for concealing a quantity of malt.

Westmorland. **B**E it remembred, that this — day of — in the — year of the reign of his majesty king George the second, at — in the said county, A. I. gentleman, in his proper person, as well for his said majesty as for himself, exhibiteth to us J. P. and K. P. esquires, two of his said majesty's justices of the peace for the said county, residing near to the place where the offence herein aftermentioned was committed, as is alledged, a complaint or information, and thereby informeth us, that A. O. of — in the said county, during 3 months now last past and longer, having been and continued to be, and yet being a maltster and maker of malt, and not having compounded for the duties of the malt herein aftermentioned, he the said A. O. within 3 months now last past, at — in the said county, did fraudulently hide, conceal, and convey away malt by him made, that is to say, 12 bushels of

of malt so by him made as aforesaid, from the sight and view of one A. E. being at the said time of the said hiding and concealing thereof, and long before, and ever since; the gager appointed to take an account of the same, and then and there endeavouring to take such account; which hiding, concealing, and conveying away as aforesaid, are contrary to the form of the statute in such case made and provided; Whereby he the said A. O. for every bushel of the said malt so hid and concealed, hath forfeited 10s. of lawful money of Great Britain, amounting in the whole to 6l. of like money. And thereupon the said A. I. who as well for his said majesty as for himself exhibiteth this information, prays the judgment of us the said justices in the premisses, and that he may have one moiety of the said forfeiture, according to the form of the statute in such case made; and that the said A. O. may be summoned to answer the said premisses, before us the said justices.

Summons on the foregoing information.

Westmorland. } To Mr. A. O. maltster.

WE J. P. and K. P. esquires, two of his majesty's justices of the peace, for the county aforesaid, do hereby give you notice, that A. I. gentleman, hath exhibited before us an information against you for the penalty of 6l. by you forfeited, for hiding, concealing, and conveying away 12 bushels of malt, from the sight and view of the gager appointed to take an account of the same, against the form of the statute in such case made: You are therefore hereby required to appear before us, at the house of ——— at the sign of ——— in ——— in the said county, on the ——— day of ——— now next ensuing, at the hour of ——— in the forenoon of the same day, then and there to answer to the said information. And if you neglect so to do, we shall proceed as if you were personally present. And we do further authorize and require Mr. A. E. officer of excise, or any other officer of excise, to serve this our summons, and to attend us at the time and place last mentioned, then and there to make a return thereof to us the said justices. Given under hands and seals at ——— in the said county, this ——— day of ——— in the ——— year of the reign of his said majesty king George the second.

Summons to give evidence.

Westmorland. } To A. W. of ——— yeoman.

WHereas we whose hands and seals are hereunto set, being two of his majesty's justices of the peace in and for the said county, have received information, that A. O. of ——— in the said county, alehousekeeper, did on the ——— day of ——— now last past, brew and sell ale and beer, and hath not made entry thereof according to the statute in that behalf made; and that you the said A. W. are a material witness to be examined concerning the same: These are therefore to require you to appear before

before us at the house of — at the sign of the — in the said county, on the — day of — now next ensuing, at the hour of — in the forenoon of the same day, to testify your knowledge concerning the premisses. Herein fail you not. Given under our hands and seals at — in the said county, the — day of — in the — year of the reign of his said majesty king George the second.

Judgment against the defendant.

AT the time and place appointed by our summons on the information within written; that is to say, this — day of — in the — year of the reign of our sovereign lord king George the second, at — in the county of — within mentioned; the within named defendant A. O. appeareth, and pleadeth that he is not guilty of the offence within mentioned; but upon a due and full hearing of the proofs made in and concerning the premisses, we do convict him thereof: [Or,—sufficient proof being made before us, that the within named defendant A. O. hath had due notice of the within written information, and that he was duly summoned to appear before us here this day; and he, in contempt of the said summons, neglecting now to appear, and making default therein; and the fact and offence in the within written information being now fully proved before us, we do convict him thereof:] It is therefore now here considered and adjudged by us the said justices, that the said defendant hath forfeited the within mentioned sum of 50 l. (which we mitigate and lessen to the sum of 7 l.) to be distributed as the law directs. Given under our hands and seals, at — aforesaid, this — day of — in the — year of the reign of our said sovereign lord king George the second.

Warrant of distress.

Westmorland. { To A. E. and B. E. officers of excise, and to either of them, and to such other person and persons as they or either of them shall take to his or their assistance.

WE whose hands and seals are hereunto set, two of his majesty's justices of the peace for the said county of — do in his said majesty's name, authorize and command you and every of you, that upon the brewing vessels and utensils for brewing used by A. O. of — in the said county, innkeeper, in the brewhouse and place where he usually brews at — aforesaid, and upon the goods and chattels of the said A. O. you or any of you do levy the sum of 20 l. of lawful money of Great Britain, by us mitigated and lessened from the sum of 50 l. of like money recovered against him by A. I. gentleman, who prosecuted as well for our sovereign lord the king, as for himself, for a certain offence committed by the said A. O. against the laws and statutes of excise, whereof he the said A. O. is convicted before us; And for the levying thereof you are to seize, take, and carry away the said brewing vessels and utensils for brewing, and also

also the goods and chattels aforesaid; and if in [eight] days next after such seizure, the said sum of 20l. together with the reasonable charges of taking and keeping the said vessels and utensils, goods and chattels, shall not be paid, then, and in such case (after the expiration of the said ——— days) you are to make sale thereof, or of so much thereof as shall be sufficient for the purposes herein specified; which said sum of 20l. when so levied as aforesaid, you are forthwith to pay to the collector of excise for the collection called ——— collection, for the time being; to be by him distributed and answered, according to the statute in such case made and provided: and after levying thereof, the overplus which shall remain of the said brewing vessels and utensils for brewing, and of the said goods and chattels, and of the money arising by such sale, you are to return unto the said A. O. upon demand, the reasonable charges of taking, keeping, and selling the said vessels and utensils, goods and chattels, being out of the said overplus money first deducted.

And all constables and other peace officers of the said county are hereby required to be aiding and assisting to you in the due execution hereof. But in case there cannot be found sufficient to raise the sum last mentioned, then and in such case you are, by a return to this our warrant, forthwith to certify the same to us the said justices. Given under our hands and seals at ——— in the said county, this ——— day of ——— in the ——— year of his said majesty's reign, and in the year of our lord 1754.

Return of the want of distress.

Westmorland. **I** A. E. one of the officers of his majesty's duties of excise, do hereby certify to J. P. and K. P. esquires, two of his said majesty's justices of the peace for the said county, that by virtue of a warrant from the said justices to levy the sum of 20l. upon the brewing vessels and utensils for brewing used by A. O. in his usual place of brewing, and upon his goods and chattels, I have made diligent search for such vessels, utensils, goods, and chattels; and that I can find none such; and that I do not know, nor can find, that the said A. O. hath any goods or chattels whatsoever. Witness my hand hereunto set, at ——— in the said county, this ——— day of ——— in the year of our lord 1754.

Warrant of commitment.

Westmorland. **To** A. E. and B. E. officers of excise, and to either of them, and to such person or persons as they or either of them shall take to their assistance: And to the gaoler or keeper of such prison to whom these presents shall come.

W Hereas we whose hands and seals are hereunto set, two of his majesty's justices of the peace for the said county of ——— by our warrant under our hands and seals, bearing date the ——— day of ——— now instant, did require and command you the said A. E. and B. E. or either of you, to levy the sum of 20l.

20l. therein mentioned on the brewing vessels and utensils for brewing, used by A. O. of ——— in the said county, innkeeper, and upon the goods and chattels of the said A. O. And whereas you the said A. E. and B. E. by a return and certificate under your hands, bearing date the ——— day of ——— now instant, have certified to us, that having made diligent search for such brewing vessels and utensils for brewing, and for such goods and chattels, you cannot find any whereon to levy the said 20l. or any part thereof, and that no such vessels, utensils, goods, or chattels can be found: We therefore the said justices do in his majesty's name hereby authorize, require, and command you, every, or any of you, to take and arrest the body of him the said A. O. and forthwith to carry him to the gaol or prison of and for the county or place where you shall so take and arrest him; and him, together with a duplicate of this our warrant, there to deliver into the custody of the gaoler or keeper of the said gaol or prison of and for the said county or place, there to remain in safe custody until he shall satisfy and pay the said sum of 20l. of lawful money of Great Britain, by us mitigated and lessened from the sum of 50l. of like money, by us the said justices adjudged against him, upon an information exhibited against him before us by A. I. gentleman, as well on the behalf of his said majesty, as of himself, for a certain offence committed by the said A. O. against the laws and statutes of excise, whereof he stands convicted before us the said justices. And all constables, and other his majesty's officers, are hereby authorized and required, to be aiding and assisting to you in the due execution hereof. And the gaoler and gaolers, keeper and keepers of such prison or gaol to which you shall so carry the body of the said A. O. is and are hereby authorized and required, to receive into his or their custody the body of the said A. O. and the same to keep in safe custody until he shall satisfy and pay the said sum of 20l. before mentioned. And for your, any, or either of your doing as is before respectively directed, this shall be to you, any, or either of you respectively, a sufficient warrant and authority. Given under our hands and seals at ——— in the said county, this ——— day of ——— in the ——— year of the reign of his said majesty, and in the year of our lord 1754.

More precedents it is not necessary to add, since the officers of excise are generally well furnished with printed forms drawn by good advice.

Note; These statutes abovementioned, relating to this title, are but temporary, and have their continuance as follows:

8 G. c. 18. Spirituous liquors. By the 8 G. 2. c. 33. to June 1. 1754, and from thence to the end of the then next session of parliament.

5 G. 2. c. 24. Coffee. By the 19 G. 2. c. 23. to Mar. 25. 1753, and from thence to the end of the then next session of parliament.

6 G. 2. c. 37. Hop-binds. By the 24 G. 2. c. 57. to Sep. 1. 1757, &c.

15 G. 2. c. 25. Rum. By the 23 G. 2. c. 26. to Sep. 29. 1757, &c.

19 G. 2. c. 34. Outlawed smugglers. By the 26 G. 2. c. 32. to June 24. 1758, &c.

Execution.

Execution.

1. **W**HERE a person attainted hath been at large after his attainder, and afterwards is brought into court and demanded why execution should not be awarded against him; if he deny that he is the same person, it shall be immediately tried by a jury returned for that purpose. 2 *Haw.* 463.

2. The court may command execution to be done, without any writ. 2 *Haw.* 463.

3. In fixed and stated judgments, the law makes no distinction between a peer and a commoner, or between a common and ordinary case, and one attended with extraordinary circumstances; for which reason it was adjudged in *Felton's* case, who murdered the duke of *Buckingham*, that the court could not order his hand to be cut off, nor make it part of the sentence that his body should be hanged in chains, but that the body after execution being at the king's disposal, might be hanged in chains, or otherwise ordered as the king should think fit. 2 *Haw.* 443.

4. But the king may pardon part of the judgment; as where the judgment is hanging, beheading, imbowelling, and the like, the king may pardon all but the beheading; whereby the judgment is not altered, but part of it remitted. 2 *H. H.* 412.

5. It is clear, that if a man condemned to be hanged, come to life after he be hanged, he ought to be hanged again; for the judgment was not executed till he was dead. 2 *Haw.* 463.

Exigent. See Process.

Extortion.

IT is said, that extortion, in a large sense, signifies any oppression under colour of right; but that, in a strict sense, it signifies the taking of money by any officer, by colour of his office, either where none at all is due, or not so much as is due, or where it is not yet due. 1 *Haw.* 170.

And by the statute of the 3 *Ed. 1. c. 26.* (which is only in affirmance of the common law) *No sheriff, nor other the king's officer, shall take any reward to do his office, but shall be paid of that which they take of the king; and he that so doth, shall yield twice as much, and shall be punished at the king's pleasure.*

No sheriff nor other the king's officer] Under these words, the law beginning with the *Sheriffs*, are understood escheators, coroners, bailiffs, gaolers, and other inferior officers of the king, whose offices were instituted before the making of this act, which do any way concern the administration or execution of justice, or the common good of the subject, or for the king's service. 2 *Inst.* 209.

Also the justices of the peace, whose office was instituted after this act, are bound by their oath of office, to take nothing for their office of justice of the peace to be done, but of the king, and fees accustomed, and costs limited by statute.

And generally, no publick officer shall take any other fees or rewards, for doing any thing relating to his office, than some statute in force gives him, or else as hath been antiently and accustomedly taken: and if he do otherwise, he is guilty of extortion. *Dalt. c. 41.*

Shall take any reward] Therefore by this statute, they can at this day take no more for doing their office, than hath been since allowed to them by authority of parliament. *2 Inst. 210.*

And all prescriptions which have been contrary to this statute, and to the common law in affirmance of which it is made, have been always holden to be void. *1 Haw. 170.*

And it hath been resolved, that a promise to pay them money for the doing of a thing, which the law will not suffer them to take any thing for, is merely void. *1 Haw. 171.*

To do his office] It is not said, that he shall take no reward generally, but no reward to do his office: Thus the fee of 20*d.* called bar fee, time out of mind taken by the sheriff of every prisoner that is acquitted, is not against this statute; for it is not taken for doing his office. *2 Inst. 210.*

But there seems to be no necessity for this distinction, for it cannot be intended to be the meaning of the statute to restrain the courts of justice, in whose integrity the law always reposes the highest confidence, from allowing reasonable fees for the labour and attendance of their officers: for the chief danger of oppression is from officers being left at their liberty to set their own rates on their labour, and make their own demands; but there cannot be so much fear of these abuses, while they are restrained to known and stated fees, settled by the discretion of the courts, which will not suffer them to be exceeded, without a proper resentment. *1 Haw. 171.*

But in the ecclesiastical court, a person was libelled against for fees, and upon motion a prohibition was granted, for that it was holden that no court hath a power to establish fees: the judge of a court may think them reasonable, but that is not binding; but if on a *quantum meruit* a jury think them reasonable, then they become established fees. *1 Salk. 333.*

The fees in sessions, for traversing, trying, or discharging indictments, discharging recognizances, and the like, do vary according to different customs in different places. *Dalt. c. 41.*

Shall yield twice as much] At the common law this offence is severely punishable at the king's suit, by fine and imprisonment, and also by a removal from the office in the execution whereof it was committed. And this statute doth add a greater penalty than the common law did give; for hereby the plaintiff shall recover his double damages. *2 Inst. 210. 1 Haw. 171.*

And by the 31 *El. c. 5.* Actions for extortion may be laid in any county.

Extortion.

At the king's pleasure] That is, by the king's justices, before whom the cause depends. . 2 Inst. 210.

Indictment for extortion in a gaoler.

THE jurors for our lord the king, upon their oath present, that A. O. late of ——— in the said county, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— was taken upon suspicion of having committed a certain felony, by ——— constable of ——— in the said county, by virtue of a warrant directed to the said ——— under the hand and seal of Robert Bolton, doctor of laws, then and yet one of the justices of our sovereign lord the king, assigned to keep the peace in the said county, and was on the same day and year committed by him the said Robert Bolton, to A. G. keeper of the gaol of our said sovereign lord the king at ——— in the said county, under the custody of him the said A. G. to be safely kept, upon suspicion of the felony aforesaid, and the said A. O. was detained in that prison under the custody of the said A. G. from the time that he was committed to the said prison for one month from thence next ensuing, upon suspicion of the said felony; nevertheless the said A. G. in no wise regarding the statute in that case made, and the penalty therein contained, did on the ——— day of ——— at ——— aforesaid, in the said county, demand and receive ——— pounds of lawful money of Great Britain of and from the said A. O. for ease and favour in the said gaol for the said time, in contempt of our said sovereign lord the king, and against the form of the statute aforesaid, and against the peace of our said sovereign lord the king, his crown and dignity.

Indictment of a bailiff for extortion.

THE jurors for our lord the king upon their oath present, that A. B. late of ——— in the said county, yeoman, being bailiff of the hundred of ——— in the said county, on the ——— day of ——— in the ——— year of the reign of ——— at ——— in the said county, by pretext and colour of his said office, did unjustly and by extortion take and extort 5 s. of one A. I. of ——— in the said county, yeoman, one of the freeholders qualified to serve upon juries in the said county, to excuse the said A. I. from attending or appearing at the assizes that were then next to be holden in and for the said county, when in fact the said A. I. was not returned by the sheriff of the said county in any panel of jurors, and also when indeed no such sum of money was due to the said A. B. for his fee for excusing the attendance or appearance of the said A. I. at the assizes aforesaid, to the evil example of other offenders to the great damage of him the said A. I. and against the peace of our said sovereign lord the king, his crown and dignity.

False tokens. See **Cheat.**

Fast days.

BY the 2 & 3 *Ed.* 6. c. 19. for the encouragement of the fisheries, and the increase of cattle; and the 5 *El.* c. 5. intitled, an act touching political constitutions for the maintenance of the navy; and by the 35 *El.* c. 7. it is enacted as follows:

No person shall eat any manner of flesh on any *Friday* or *Saturday*, or the embring days, or in *Lent*, nor on any other day commonly reputed a fish day; on pain of forfeiting 20*s.* or being imprisoned one month.

And every person in whose house any flesh shall be eaten on fish days, and not disclosing the same to a publick officer having authority to punish the same; shall forfeit 13*s.* 4*d.*

Which said forfeitures shall be, one third to the king, one third to the informer, and one third to the common use of the parish where the offence shall be committed; to be levied by the churchwardens after conviction.

Prosecution to be at the assizes or sessions, in three months after the offence committed.

But nothing herein shall extend to any person having the king's licence; or being in great age, and weakness thereby; or sick, or notably hurt; or woman with child, or lying in child bed, for eating of such one kind of flesh as she shall have great lust unto; or in prison; nor to the king's lieutenant, deputy, or captain in his armies, but the same may eat, or license their soldiers to eat flesh for lack of other victual; nor to persons licensed by the archbishop of *Canterbury*.

And such licences shall be on condition, that the person licensed shall within six days after *Candlemas*, pay to the poor box where he dwells, if he be a lord 26*s.* 8*d.* a knight 13*s.* 4*d.* and all others 6*s.* 8*d.*

But sick persons may be licensed by the bishop of the diocese, or of the parson, vicar, or curate of the parish, or (if there be none, or he be wilful) of the next parish; and if the sickness continues above eight days, the licence shall be registred in the church book, with the knowledge of a churchwarden; and the curate shall have 4*d.* for entry; and the same to endure no longer than such sickness.

And no licence shall extend to the eating any beef at any time of the year, nor veal from *Sep.* 29. to *May* 1. in any year.

And persons licensed (except for sickness) shall for every dish of flesh at their table, have one dish of sea fish.

Fees. See **Extortion.**

Felo de se. See **Homicide.**

D d 2

Felony,

Felony, Misprision of felony, and Theftbote.

I. Felony.

FELONY, according to Sir *Edw. Coke*, signifies any crime committed *felleo animo*, from the *Saxon* word *fell*, fierce; or the *Latin* *fel*, gall; that is, with a fierce or bitter mind.

But the learned Sir *H. Spelman* gives us a different, and more probable account, of the derivation of this word, that it comes from the *Saxon* word *feah*, now called *fee*, a reward, or estate; and the *German* *lon*, price: for this was formerly a crime punished not by death, but with the price or loss of the estate. *Spelm. Gloss. Felony.*

It would swell this title near to the bigness of half the book, to set down every thing which may be comprehended under this word *felony*: therefore it is necessary to refer the consideration of the several particular kinds of felonies to their respective titles; as for instance, *Homicide*, *Robbery*, *Burglary*, *Rape*, *Coin*, *Forgery*, and many others; and especially the law relating to stolen goods of all kinds belongeth to title *Larceny*.

The method of bringing a felon to justice from the first commission of the felony, to his condemnation and execution, is treated of under the several titles of *Hue and cry*, *Arrest*, *Examination*, *Bail*, *Commitment*, *Gaol*, *Arraignment*, *Appeal*, *Indictment*, *Mute*, *Confession*, *Jurors*, *Evidence*, *Clergy*, *Judgment*, *Attainder*, *Forfeiture*, *Transportation*, *Execution*. And the course and whole procedure of trying an offender, is treated of under title *Sessions*.

So that there is nothing left for this place, but to take notice of one circumstance which is common to all felonies in general, and that is, concerning the charges of prosecution:

By the 3 *J. c.* 10. The felon shall pay the charges of his carrying to gaol, if able; to be levied by distress by warrant of one justice.

And by the statute of the 27 *G. 2.* if he is not able, the same shall be paid, by order of such justice, by the treasurer out of the county rates; and in *Middlesex* by the overseers of the poor where the party was apprehended.

And by the 25 *G. 2. c.* 36. the court, before whom any person hath been tried and convicted of any grand or petit larceny, or other felony, may, at the prayer of the prosecutor, and on consideration of his circumstances, order the treasurer of the county in which the offence shall have been committed, to pay him such sum as they shall judge reasonable, not exceeding the expences he was put to in carrying on the prosecution, with a reasonable allowance for his time and trouble; and the clerk of assize or of the peace, shall forthwith make out such order, and deliver the same to the prosecutor, on paying 1 *s.* and the treasurer

surer shall pay the same on sight, and be allowed the same in his accounts.

Which said act hath continuance for 3 years &c.

And by the aforesaid act of the 27 G. 2. When any poor person shall appear on recognizance to give evidence, the court may order the treasurer to pay him such sum as they shall think reasonable, for his time, trouble, and expences; which order the proper officer shall make out for the fee of 6 d. Except in *Middlesex*, where the same shall be paid by the overseers of the poor where the person was apprehended.

II. *Misprision of felony.*

Misprision of felony (from *mespris*, a neglect or contempt, 3 *Inst.* 36.) is the concealing of a felony which a man knows, but never consented to; for if he consented, he is either principal or accessary in the felony, and consequently guilty of misprision of felony and more. 1 *H. H.* 374.

For it is said, that every felony includes misprision of felony, and may be proceeded against as a misprision only, if the king pleases. 1 *Harw.* 125.

The punishment of misprision of felony in a common person, is fine and imprisonment; in an officer, as sheriff or bailiff of liberties, imprisonment for a year, and ransom at the king's pleasure, by the statute of 3 *Ed.* 1. c. 9.

If any person will save himself from the crime of misprision, he must discover the offence to a magistrate with all speed that he can. 3 *Inst.* 140.

Misprision, in a larger sense, is used to signify every considerable misdemeanor, which hath not a certain name given to it in the law.

III. *Theftbote.*

Theftbote (from *theft*, and *bote*, boot or amends) is, where one not only knows of a felony, but takes his goods again, or other amends, not to prosecute. 1 *Harw.* 125.

But the bare taking of one's own goods again, which have been stolen, is no offence, unless some favour be shewn to the thief. 1 *Harw.* 125.

This offence is very nearly allied to felony, and is said to have been anciently punished as such; but at this day it is punishable only with ransom and imprisonment, unless it were accompanied with some degree of maintenance given to the felon, which makes the party an accessary after the fact. 1 *Harw.* 125.

Feme covert. See **Wife.**

Fences. See **Wood.**

Fire. See **Burning.**

Fire in London.

THE acts relating thereto are,
 6 *An. c.* 31.
 7 *An. c.* 17.
 11 *G. c.* 28.

Fireworks.

Fireworks a
nuſance.

1. **I**T ſhall not be lawful for any perſon to make or cauſe to be made, or to ſell or expoſe to ſale, any ſquibs, rockets, ſerpents, or other fireworks, or any caſes, moulds, or other implements for making the ſame; or to permit the ſame to be caſt or fired from his houſe or other place thereto belonging, into any publick ſtreet or road; or to throw or fire, or be aiding in throwing or firing the ſame, in any publick ſtreet, houſe, ſhop, river, or highway; and every ſuch offence ſhall be adjudged a common nuſance. 9 & 10 *W. c.* 7. *f.* 1.

Making or ſelling
rockets.

2. And if any perſon ſhall make or cauſe to be made, or give, ſell, or offer to ſale, any ſquibs, rockets, ſerpents, or other fireworks, or any caſes, moulds, or other implements for making the ſame; he ſhall on conviction before one juſtice, or chief magiſtrate, by confeſſion, or oath of two witneſſes, forfeit 5*l.* half to the poor, and half to the proſecutor; to be levied by diſtreſs and ſale, by warrant of ſuch juſtice or chief magiſtrate. 9 & 10 *W. c.* 7. *f.* 2.

Suffering rockets
to be fired.

3. And if any perſon ſhall permit any the ſame to be caſt or fired, from his houſe or other place thereto belonging, into any publick ſtreet or road, or any other houſe or place; he ſhall forfeit 20*s.* in like manner. 9 & 10 *W. c.* 7. *f.* 2.

Firing rockets.

4. And if any perſon ſhall caſt or fire, or be aiding in caſting or firing any the ſame, into any publick ſtreet, houſe, ſhop, river or highway; he ſhall forfeit 20*s.* in like manner: and if he ſhall not immediately on conviction pay to the juſtice the ſaid forfeiture for the uſes aforeſaid, he ſhall commit him to the houſe of correction to be kept to hard labour for any time not exceeding one month, unleſs he ſhall ſooner pay the forfeiture. 9 & 10 *W. c.* 7. *f.* 3.

Exception.

5. But nothing herein ſhall extend to the officers of the ordnance, or artillery company. 9 & 10 *W. c.* 7. *f.* 4, 5.

Fiſh and fiſhing. See **G**ame.

Fiſh ſalted. See **E**xciſe.

Flight. See **F**orfeiture.

Fozcible

Forcible entry and detainer.

FORCE, in the common law, is most commonly taken in ill part, for unlawful violence. 1 *Inst.* 161.

It seems that at the common law, a man disseised of any lands or tenements, if he could not prevail by fair means, might lawfully regain the possession thereof by force, unless he were put to a necessity of bringing his action, by having neglected to re-enter in due time: And it seems certain, that even at this day, he who is wrongfully dispossessed of his goods, may justify the retaking of them by force from the wrong doer, if he refuse to re-deliver them; for the violence which happens thro' the resistance of the wrongful possessor, being originally owing to his own fault, gives him no just cause of complaint, inasmuch as he might have prevented it by doing as he ought. 1 *Haw.* 140.

But this indulgence of the common law, in suffering persons to regain the lands they were unlawfully deprived of, having been found by experience to be very prejudicial to the publick peace, by giving an opportunity to powerful men under the pretence of feigned titles, forcibly to eject their weaker neighbours, and also by force to retain their wrongful possessions, it was thought necessary by many severe laws to restrain all persons from the use of such violent methods of doing themselves justice. 1 *Haw.* 141.

However even at this day, in an *action* of forcible entry grounded on those laws, if the defendant make himself a title which is found for him, he shall be dismissed without any inquiry concerning the force; for howsoever he may be punishable *at the king's suit*, for doing what is prohibited by statute, as a contemner of the laws, and disturber of the peace, yet he shall not be liable to pay any damages for it to the plaintiff, whose injustice gave him the provocation in that manner to right himself. 1 *Haw.* 141.

Since therefore offences of this nature are made such, not by the common law, but by statute (after having premised, that *they who keep possession with force, in lands and tenements, whereof they or their ancestors, or they whose estate they have in the same, have continued their possession in the same, by three whole years next before without interruption, shall not be indamaged by force of any of the statutes concerning forcible entry, 8 H. 6. c. 9. f. 7. 1 Haw. 152.*) I shall consider those several statutes, with the interpretation that hath been put upon them, under the following heads:

Forcible entry and detainer.

- I. *What is a forcible entry.*
- II. *What is a forcible detainer.*
- III. *How the same are punishable by action at law.*
- IV. *How punishable at the general sessions.*
- V. *How punishable by one justice.*
- VI. *How punishable on a certiorari.*
- VII. *How punishable as a riot.*

I. *What is a forcible entry.*

By the 5 R. 2. c. 8. *None shall make any entry into any lands or tenements (or benefices of holy church, 15 R. 2. c. 2. or other possessions, 8 H. 6. c. 9. s. 2.) but where entry is given by the law; and in such case not with strong hand, nor with multitude of people, but only in peaceable and easy manner; on pain of imprisonment and ransom at the king's will.*

Or other possessions] It seems clear, that no one can come within the danger of these statutes, by a violence offered to another in respect of a way, or such like easement, which is no possession. And there seems to be no good authority, that an indictment will lie in this case for a common, or office. 1 Haw. 146.

Not with strong hand, nor with multitude of people] It seems certain, that if one who pretends a title to lands, barely go over them, either with or without a great number of attendants, armed or unarmed, in his way to the church or market, or for such like purpose, without doing any act, which either expressly or impliedly amounts to a claim of such lands, he cannot be said to make an entry thereinto. 1 Haw. 144.

But it seemeth, that if a person enter into another man's house, or ground, either with apparent violence offered to the person of any other, or furnished with weapons, or company, which may offer fear, tho' it be but to cut, or take away another man's corn, grafs, or other goods, or to fell or crop wood, or do any other like trespass, and tho' he do not put the party out of his possession, yet it seemeth to be a forcible entry. Dalt. c. 126.

But if the entry were peaceable, and after such entry made, they cut or take away any other man's corn, grafs, wood, or other goods, without apparent violence or force; tho' such acts are counted a disseisin with force, yet they are not punishable as forcible entries. Dalt. c. 126.

But if he enter peaceably, and there shall by force or violence cut or take away any corn, grafs, or wood, or shall forcibly or wrongfully carry away any other goods there being; this seemeth to be a forcible entry punishable by these statutes. Dalt. c. 126.

So also shall those be guilty of a forcible entry, who having an estate in land, by a defeasible title, continue with force in the possession

possession thereof, after a claim made by one who had a right of entry thereto. 1 *Haw.* 145.

But he who barely agrees to a forcible entry made to his use, without his knowledge or privity, shall not be adjudged to make an entry within these statutes, because he no way concurred in, or promoted the force. 1 *Haw.* 145.

And, in general, it seemeth clear, that to denominate the entry forcible, it ought to be accompanied with some circumstances of actual *violence*, or *terror*; and therefore that an entry which hath no other force than such as is implied by the law, in every trespass whatsoever, is not within these statutes. 1 *Haw.* 145.

As to the matter of *violence*; it seems to be agreed, that an entry may be forcible, not only in respect of a violence actually done to the person of a man, as by beating him if he refuse to relinquish his possession, but also in respect of any other kind of violence in the manner of the entry, as by breaking open the doors of a house, whether any person be in it or not, especially if it be a dwelling house, and perhaps also by any act of outrage after the entry, as by carrying away the party's goods; but it seems that an entry is not forcible, by the bare drawing up a latch, or pulling back the bolt of a door, there being no appearance therein of being done by *strong hand*, or *multitude of people*; and it hath been holden, that an entry into a house thro' a window, or by opening a door with a key, is not forcible. 1 *Haw.* 145.

In respect of the circumstances of *terror*; it is to be observed, that wherever a man, either by his behaviour or speech, at the time of his entry, gives those who are in possession just cause to fear, that he will do them some bodily hurt, if they will not give way to him, his entry is esteemed forcible, whether he cause such a terror, by carrying with him such an unusual number of attendants, or by arming himself in such a manner, as plainly intimates a design, or by actually threatening to kill, maim, or beat those who shall continue in possession, or by giving out such speeches, as plainly imply a purpose of using force, as if one say that he will keep his possession in spite of all men, or the like. 1 *Haw.* 145.

But it seems that no entry shall be judged forcible, from any threatening to spoil another's goods, or to destroy his cattle, or to do him any other such like damage, which is not personal. 1 *Haw.* 146.

However it is clear, that it may be committed by a single person, as well as by twenty. 1 *Haw.* 146.

But nevertheless all those who accompany a man, when he makes a forcible entry, shall be adjudged to enter with him, whether they actually come upon the lands or not. 1 *Haw.* 144.

II. What is a forcible detainer.

It seemeth certain, that the same circumstances of violence or terror which will make an entry forcible, will make a detainer forcible

Forcible entry and detainer.

forcible also. And a detainer may be forcible, whether the entry were forcible or not. 1 *Haw.* 146.

III. How they are punishable by action at law.

If any person be put out or disseised of any lands or tenements in forcible manner, or put out peaceably, and after bolden out with strong hand; the party grieved shall have assize of novel disseisin, or a writ of trespass against the disseisor; and if he recovers, he shall have treble damages, and the defendant moreover shall make fine and ransom to the king. 8 H. 6. c. 9. s. 6.

The party grieved shall have assize &c.] But this action, being at the suit of the party, and only for the right, is only where the entry of the defendant was not lawful: for if a man entred with force, where his entry is lawful, he shall not be punished by way of action; but yet he may be indicted upon the statute, for the indictment is for the force, and for the king, and he shall make fine to the king, altho' his right be never so good. Dalt. c. 129.

Treble damages] And this he shall recover, as well for the mean occupation, as for the first entry: And albeit he shall recover treble damages, yet he shall recover costs, which shall be trebled also; for the word *damages* includeth costs of suit. 1 *Inst.* 257.

IV. How punishable at the general sessions.

The party grieved, if he will lose the benefit of his treble damages and costs, may be aided and have the assistance of the justices at the general sessions, by way of indictment (A) on the statute of 8 H. 6. Which being found there, he shall be restored to his possession, by a writ of restitution granted out of the same court to the sheriff. *Dalt. c. 129.*

In the caption of which indictment, it will be sufficient to say, *justices assigned to keep the peace of our lord the king*, without shewing that they have authority to hear and determine felonies and trespasses; for the statute enables all justices of the peace, as such, to take such indictments. 1 *Haw.* 147.

And the tenement in which the force was made, must be described with convenient certainty; and must set forth that the defendant actually entred; and ousted the party grieved; and continueth his possession at the time of finding the indictment; otherwise he cannot have restitution, because it doth not appear that he needeth it. 1 *Haw.* 147, 149, 150.

But if a man's wife, children, or servants do continue in the house or upon the land, he is not ousted of his possession; but his cattle being upon the ground, do not preserve his possession. *Dalt. c. 132.*

An indictment for forcible entry was quashed, for not setting forth, that the party was seised or disseised; or what estate he had in the tenement; for if he had only a term for years, then the entry

Forcible entry and detainer.

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entry must be laid, into the freehold of *A.* in the possession of *B.*
3 Salk. 169.

V. How punishable by one justice.

1. For a more speedy remedy, the party grieved may complain to any one justice; or to a mayor, sheriff, or bailiff, within their liberties. 8 H. 6. c. 9.

2. But altho' one justice alone may proceed in such cases, yet it may be advisable for him, if the time for viewing the force will suffer it, to take to his assistance one or two more justices.

3. Concerning which power of one justice, it is enacted as follows:

After complaint made to such justice, by the party grieved, of a forcible entry made into lands, tenements, or other possessions, or forcible holding thereof, he shall within a convenient time, at the costs of the party grieved (without any examining or standing upon the right or title of either party) take sufficient power of the county, and go to the place where such force is made. 15 R. 2. c. 2. 8 H. 6. c. 9. f. 2. Dalt. c. 44.

Complaint — *by the party grieved*] Yet these words do not enforce any necessity of such a complaint; for it is holden, that the justice may and ought to proceed, upon any information or knowledge thereof whatsoever, tho' no complaint at all be brought unto him, by any party grieved thereby. Lamb. 147.

Power of the county] All people of the county, as well the sheriffs as other, shall be attendant on the justices, to arrest the offenders; on pain of imprisonment and fine to the king. 15 R. 2. c. 2.

4. And if the doors be shut, and they within the house shall deny the justice to enter, it seems he may break open the house, to remove the force. Dalt. c. 44.

5. And if after such entry made, the justice shall find such force; he shall cause the offenders to be arrested. 15 R. 2. c. 2. 8 H. 6. c. 9. f. 2.

6. He shall also take away their weapons and armour, and cause them to be appraised, and after to be answered to the king as forfeited, or the value thereof. 2 Ed. 3. c. 3.

7. Also such justice ought to make a record (B) of such force by him viewed; which record shall be a sufficient conviction of the offenders, and the parties shall not be allowed to traverse it: And this record, being made out of the sessions, by a particular justice, may be kept by him; or he may make it indented, and certify the one part into the king's bench, or leave it with the clerk of the peace; and the other part he may keep himself. For this view of the force by the justice, being a judge of record, maketh his record thereof, in the judgment of the law, as strong and effectual, as if the offenders had confessed the force before him; and touching the restraining of traverse, more effectual, than if the force had been found by a jury, upon the evidence of others. (That is,

as

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as to the fine and imprisonment, but not as to restitution.) 15 R. 2. c. 2. *Dalt. c. 44.*

8. And the offenders, being arrested (as before is said), *shall be put in the next gaol (C) there to abide convict by the record of the same justice, until they have made fine and ransom to the king.* 15 R. 2. c. 2.

Shall be put in the next gaol] It is said, that the justice hath no power to commit the offender to gaol, unless he do it upon his own view of the fact, and not upon the jury finding the same afterwards. *Dalt. c. 44. 1 Harw. 142.*

And if such offenders, being in the house at the coming of the justice, shall make no resistance, nor make shew of any force, then the justice cannot arrest or remove them at all upon such view. *Dalt. c. 44.*

But howsoever, if the force be found afterwards, by the inquiry of the jury, the justice may bind the offenders to the peace; and if they be gone, he may make his warrant to take them, and may after send them to the gaol, until they have found sureties for the peace. *Dalt. c. 44.*

Note; Mr. Dalton in this place says *good behaviour*, which I have presumed to alter to *the peace*, as deeming it much the safer; and not being sufficiently satisfied concerning the power of a justice of the peace to bind to the good behaviour in the like cases, which power Mr. Dalton hath enlarged more than all other authors, without any assistance from the commission of the peace, or any act of parliament, other than had been for above 200 years before.

Until they have made fine] In the case of the King and Sir Edm. Ellewel, &c. 1 G. 2. The judges were all of opinion, that the justice himself might and ought to set the fine, he being best apprised from his view, of the nature of the offence;—and that he need not immediately set it, but may adjourn for a little time to consider of the fine;—and, in that case, the commitment being that the defendants should lie in prison till they pay their fine, and no fine being set, the commitment was held therefore to be illegal. *L. Raym. 1515. Sess. Caf. V. I. 289.*

And the same was likewise solemnly resolved in Leighton's case; and that the justice may assess the same, either before the conviction or after. *1 Harw. 142.*

And the fine must be assessed upon every offender severally, and not upon them jointly; and the justice ought to estreat the fine, and to send the estreat into the exchequer, that from thence the sheriff may be commanded to levy it for his majesty's use. *Dalt. c. 44.*

But upon payment of the fine to the sheriff, or upon sureties found (by recognizance) for the payment thereof, it seemeth that the justice may deliver the offenders out of prison again at his pleasure. *Dalt. c. 44.*

9. And so much concerning removing the force: But the party ousted cannot be restored to his possession by the justice's view of the

the force; nor unless the same force be found by the inquiry of a jury.

Concerning which it is enacted as follows: *And tho' that the persons making such entry be present, or else departed before the coming of the justice; he may notwithstanding in some good town next to the tenements so entred, or in some other convenient place by his discretion (and that, tho' he go not to see the place where the force is; Dalt. c. 44.) have power to inquire by the people of the county, as well of them that make such forcible entry, as of them which hold the same with force. 8 H. 6. c. 9. f. 3.*

10. In order to which, the justice shall make his precept (D) to the sheriff, commanding him in the king's behalf, to cause to come before him, sufficient and indifferent persons, dwelling next about the lands so entred, to inquire of such entries; whereof every man shall have lands or tenements of 40 s. a year, above reprises. And the sheriff shall return issues on every of them, at the day of the first precept returnable 20 s. and at the second day 40 s. and at the third day 100 s. and at every day after double. And the sheriff making default, shall on conviction before the same justice, or before the judge of assize, forfeit 20 l. half to the king, and half to him who shall sue, with costs; and moreover shall make fine and ransom to the king. 8 H. 6. c. 9. f. 4, 5.

Before the same justice] And the justice may proceed against the sheriff for this default, either by bill at the suit of the party, or by indictment at the suit of the king. *Dalt. c. 44.*

11. And the defendant also, if he is not present, ought to be called to answer for himself; for it is implied by natural justice, in the construction of all laws, that no one ought to suffer any prejudice thereby, without having first an opportunity of defending himself. *1 Harw. 154.*

12. And it seems to be settled at this day, that if the defendant tender a *traverse* of the force, the justice ought not to make any restitution, till the traverse be tried. *1 Harw. 154.*

13. The defendant may also by the 31 El. c. 11. plead *three years possession*; whereby it is enacted, that no restitution upon an indictment of forcible entry, or holding with force, shall be made, if the person indicted have had the occupation, or been in quiet possession for 3 years together next before the indictment found, and his estate therein not determined; and restitution shall stay till that be tried: and if it is found against the party indicted, he shall pay such costs and damages as the judges or justices shall assess; to be recovered as costs and damages in judgments on other actions.

And it hath been holden, that the plea of such possession is good, without shewing under what title, or of what estate such possession was; because it is not the title, but the possession only, which is material in this case. *1 Harw. 152.*

14. And it was holden by the court in *Leighton's case*, that if the defendant shall either traverse the entry or the force, or plead that he has been three years in possession, the justice may summon a jury for the trial of such traverse, for it is impossible to determine it upon view; and if the justice have no power to try it, it would be easy for any one to elude the statute by the tender of such a traverse,

traverse, and therefore by a necessary construction the justice must needs have this power as incidental to what is expressly given him.

1 Haw. 142.

15. And this traverse must be tendred in writing, and not by a bare denial of the fact in words; for thereupon a *venire facias* must be awarded, a jury returned, the issue tried, a verdict found, and judgment given, and costs and damages awarded; and there must be a record, which must be in writing, to do all this, and not a verbal plea. *Dalt. c. 133. 1 Haw. 154.*

16. Upon which traverse tendred, the justice shall cause a new jury to be returned by the sheriff, to try the traverse; which may be done the next day, but not the same day. *Dalt. c. 133.*

17. And it seemeth, that he who tendreth the traverse, shall bear all the charges of the trial; and not the king, or the party prosecuting. *Dalt. c. 133.*

18. And if such forcible entry or detainer be found (E) before such justice, then the said justice shall cause to reſeife (F) the lands and tenements so entred or holden, and shall restore the party put out, to the full possession of the same. 8 H. 6. c. 9. f. 3.

The said justice] It seems to be agreed, that no other justices of the peace, except those before whom the indictment shall be found, shall have any power either at the sessions or out of it, to make any award of restitution. 1 Haw. 152.

Shall cause to reſeife] And the justice may break open the house by force, to reſeife the same; and so may the sheriff do, having the justice's warrant. *Dalt. c. 44.*

Reſeife] That is, shall remove the force, by putting out all such offenders as shall be found in the house, or upon the lands, that entred or held with force. *Dalt. c. 130.*

And shall restore the party put out] And this he may do in his own proper person; or he may make his warrant to the sheriff to do it. *Dalt. c. 44. 1 Haw. 151, 2.*

19. And by 21 J. c. 15. it is enacted, that such judges, justices, or justice of the peace, as may give restitution unto tenants of any estate of freehold, may give the like unto tenants for term of years, tenants by copy of court roll, guardians by knight's service, tenants by elegit, statute merchant and staple, of lands or tenements by them so holden, which shall be entred upon by force, or holden from them by force.

VI. How punishable on a certiorari.

If the record of the presentment or indictment shall be certified by the justice into the king's bench, or the same presentment or indictment be removed and certified thither by *certiorari*, the justices of that court may award a writ of restitution to the sheriff, to restore possession to the party expelled. *Dalt. c. 44.*

VII. How

VII. How punishable as a riot.

If a forcible entry or detainer shall be made by three persons or more, it is also a riot, and may be proceeded against as such, if no inquiry hath before been made of the force. *Dalt. c. 44.*

A. Indictment for a forcible entry and detainer at common law.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of _____ in the county aforesaid, gentleman, and B. O. late of the same, yeoman, together with divers other malefactors and disturbers of the peace of our said lord the king (whose names to the jurors aforesaid are yet unknown) on the _____ day of _____ in the _____ year of the reign of _____ with force and arms, at _____ aforesaid, in the county aforesaid, unlawfully and injuriously did enter into a certain barn and a certain orchard, then and there being in the possession of one A. I. and that the said A. O. and B. O. together with the said other malefactors, then and there, with force and arms, unlawfully and injuriously did expel, amove, and put out the said A. I. from the possession of the said barn and orchard, and the said A. I. so as aforesaid expelled, amoved, and put out from the possession of the said barn and orchard, then and there, with force and arms, unlawfully and injuriously did keep out, and still do keep out, to the great damage of him the said A. I. and against the peace of our said lord the king, his crown and dignity.

Indictment on the statute.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. I. late of the parish of _____ in the county aforesaid, gentleman, on the _____ day of _____ in the _____ year of the reign of _____ was possessed of a certain messuage, with the appurtenances, situate, lying, and being in _____ in the parish aforesaid, in the county aforesaid, for a certain term of years, then and still to come, and unexpired, and and being so possessed thereof, one A. O. late of _____ in the said county, yeoman, afterwards, to wit, the said _____ day of _____ in the year aforesaid, into the said messuage, with the appurtenances aforesaid, in _____ aforesaid, in the parish and county aforesaid, with force and arms, and with strong hand, unlawfully did enter, and the said A. I. from the peaceable possession of the said messuage, with the appurtenances aforesaid, then and there with force and arms, and with strong hand, unlawfully did expel and put out, and the said A. I. from the possession thereof, so as aforesaid, with force and arms, and with strong hand, being unlawfully expelled and put out, the said A. O. him the said A. I. from the aforesaid _____ day of _____ in the year aforesaid, until the day of the taking this inquisition, from the possession of the said messuage, with the appurtenances aforesaid, with force and arms, and with strong hand, unlawfully and injuriously then and there did keep out, and still doth keep out, to the great damage of the said A. I. against the peace of our said lord the king, and against the form of the statutes in that case made and provided.

Note ;

Forcible entry and detainer.

Note; If it is a freehold, then the party must be said to be *seised* thereof in his demesne as of fee; and consequently he must be thereof *disseised*: otherwise if it is of a lesser estate, of which he is not properly said to be *seised*, but possessed thereof, at the will of the lord, according to the custom of the manor, or the like, and then he must be *expelled, ejected, amoved*, or the like.

B. Record of a forcible detainer upon view.

Note, That the books upon the office of a justice of the peace do generally set forth, that the record ought to be in the present tense, and not in the time past; and yet they do all exhibit the form of a record in the time past, and not in the present: Therefore I have taken the liberty to alter the same, from the record in *L. Raymond* of the conviction of Sir *Edm. Elwell* aforesaid, and others; adding the fine thereunto, for the want of which that conviction was quashed. And I have given the form of a record of a forcible *detainer*, rather than of a forcible *entry*, because the justice for the most part cannot be supposed to be present at the entry, as not having knowledge thereof until after the entry is made.

Kent, **B**E it remembred, that on the 15th day of Sep. in the to wit. **B** first year of the reign of our sovereign lord George the second of Great Britain, France, and Ireland, king, defender of the faith, and so forth, at Beckingham in the county of Kent aforesaid, Eliz. Elwell complained to us E. B. P. B. and W. P. three of the justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, that Sir Edm. Elwell, late of London, baronet, I. B. and D. M. into the messuage of her the said E. E. being the mansion house of her the said E. E. called Langley house, situate within the parish of Beckingham aforesaid, did enter, and her the said E. E. of the messuage aforesaid, whereof the same E. E. at the time of the entry aforesaid was seised as of the freehold of her the said E. E. for the term of her life, unlawfully ejected, expelled, and amoved, and the said messuage from her the said El. E. unlawfully, with strong hand and armed power, do yet hold and from her detain, against the form of the statute in such case made and provided; whereupon the same El. E. then, to wit, on the said 15th day of Sep. at the parish of B. aforesaid, prayeth of us, so as aforesaid being justices, to her in this behalf that a due remedy be provided, according to the form of the statute aforesaid: Which complaint and prayer by us the aforesaid justices being heard, we the aforesaid E. B. baronet, P. B. and W. P. esquires, justices aforesaid, to the messuage aforesaid personally have come, and do then and there find and see the aforesaid Edm. E. I. B. and D. M. the aforesaid messuage, with force and arms, unlawfully, with strong hand and armed power, detaining, against the form of the statute in such case made and provided, according as she the same El. E. so as is aforesaid hath

unto

unto us complained: Therefore it is considered by us the aforesaid justices, that the aforesaid Edmund Elwell, Joseph Billers, and Daniel Monty, of the detaining aforesaid with strong hand, by our own proper view then and there as is aforesaid had, are convicted, and every of them is convicted, according to the form of the statute aforesaid; Whereupon we the justices aforesaid, upon every of the aforesaid Ed. E. J. B. and D. M. do set and impose severally a fine of 10l. of good and lawful money of Great Britain, to be paid by them and every of them severally to our said sovereign lord the king, for the said offences; and do cause them, and every of them, then and there to be arrested; and the same Ed. E. J. B. and D. M. being convicted, and every of them being convicted upon our own proper view, of the detaining aforesaid, with strong hand as is aforesaid, by us the aforesaid justices are committed, and every of them is committed, to the gaol of our said lord the king, at Maidstone in the county of Kent aforesaid, being the next gaol to the messuage aforesaid, there to abide respectively, until they shall have paid their said several fines respectively, to our said lord the king, for their respective offences aforesaid. Concerning which the premises aforesaid, we do make this our record. In witness whereof, we the aforesaid E. B. baronet, P. B. and W. P. esquires, the justices aforesaid, to this record our hands and seals do set, at the parish of B. aforesaid, in the county of Kent aforesaid, on the 15th day of Sep. in the first year aforesaid of the reign of our said sovereign lord the now king.

E. Bettenfon.
P. Burrel.
W. Passenger.

C. Mittimus for forcible detainer.

Westmorland. **E**DWARD Hassel, esquire, one of the justices of our sovereign lord the king's majesty, assigned to keep the peace within his said county of W. and also to hear and determine divers felonies, trespasses, and other misdemeanors in his said county committed; To the keeper of his majesty's gaol at — in the said county, and to his deputy and deputies there, and to every of them, greeting. Whereas upon complaint made unto me this present day, by A. I. of — in the said county, yeoman, I went immediately to the dwelling house of the said A. I. at — aforesaid in the said county, and there found A. O. late of — labourer, B. O. late of the same, weaver, and C. O. late of — butcher, forcibly, with strong hand and armed power, holding the said house, against the peace of our said lord the king, and against the form of the statute in such case made and provided: Therefore I send you, by the bringers hereof, the bodies of the said A. O. B. O. and C. O. convicted of the said forcible holding, by mine own view, testimony, and record; commanding you in his said majesty's name, to receive them into your said gaol, and there safely to keep them, and every of them respectively, until they shall have respectively paid the several sum of 10l. of good and lawful money of Great Britain, to our said sovereign lord the now king.

Forcible entry and detainer.

sovereign lord the king, which I have set and imposed upon every of them separately, for a fine and ransom for their said trespasses respectively. Herein fail you not, at the peril that may follow thereof. Given at ——— aforesaid, in the county aforesaid, under my seal, the ——— day of ——— in the ——— year of the reign of our said sovereign lord King George the second.

Note; By the forms in all the books, all the offenders stand committed until all have paid, so as that the first shall not be discharged on payment of his own fine, but continue until all the rest have paid likewise; which seems unreasonable, and is not warranted by the statute.

D. Precept to the sheriff to return a jury.

Westmorland. **H**ENRY Aglionby, esquire, one of the justices of our lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; To the sheriff of the said county, greeting: On behalf of our said lord the king, I command you, that you cause to come before me at ——— in the county aforesaid, on the ——— day of ——— next ensuing, twenty-four sufficient and indifferent men, of the neighbourhood of ——— aforesaid, in the county aforesaid, every of whom shall have lands or tenements of 40 s. yearly at the least, above reprises, to inquire upon their oaths for our said lord the king, of a certain entry made with strong hand (as it is said) into the messuage of one A. I. at ——— aforesaid, in the county aforesaid, against the form of the statute in such case made and provided. And you are to return upon every of the jurors by you in this behalf to be impanelled, 20 s. of issues at the aforesaid day. And have you then there this precept. And this you shall in no wise omit, upon the peril that shall thereof ensue. Witness the said J. P. at ——— in the county aforesaid, the ——— day of ——— in the ——— year of the reign of ———.

The jurors oath.

YOU shall true inquiry and presentment make of all such things as shall come before you, concerning a forcible entry [or, detainer] said to have been lately committed in the dwelling house of ——— yeoman, at ——— in this county; you shall favour no one for affection or reward, nor grieve any one for hatred or ill-will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you: So help you God.

The oath that A. F. your foreman hath taken on his part, you and every of you shall truly observe and keep on your parts: So help you God.

E. The inquisition, indictment, or finding of the jury.

Westmorland. **A**N inquisition for our sovereign lord the king, indented and taken at — in the said county, the — day of — in the — year of the reign of — by the oaths of — good and lawful men of the said county, before J. P. esquire, one of the justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the same county committed, who say upon their oaths aforesaid, that A. I. of — aforesaid, yeoman, long since lawfully and peaceably was seised in his demesne as of fee [if it is not freehold, then say, possessed] of and in one messuage, with the appurtenances, in — aforesaid, in the county aforesaid, and his said possession [and seisin] so continued until A. O. late of — yeoman, B. O. late of the same, yeoman, and C. O. late of the same, yeoman, and other malefactors unknown, the — day of — now last past, with strong hand and armed power, into the messuage aforesaid, with the appurtenances aforesaid, did enter, and him the said A. I. thereof disseised; and with strong hand expelled; and him the said A. I. so disseised and expelled from the said messuage with the appurtenances aforesaid, from the said — day of — until the day of the taking of this inquisition, with like strong hand and armed power did keep out, and do yet keep out, to the great disturbance of the peace of our said lord the king, and against the form of the statute in such case made and provided.

We whose names are hereunto set, being the jurors above-said, do upon the evidences now produced before us, find the inquisition aforesaid true.

A. B.

C. D. &c.

F. Warrant to the Sheriff for restitution.

Westmorland **H**ENRY Fletcher, esquire, one of the justices of our sovereign lord the king, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; To the sheriff of the said county, greeting: Whereas by an inquisition taken before me the justice aforesaid, at — in the county aforesaid, on this present day of — in the — year of the reign of — upon the oaths of — and by virtue of the statutes made and provided in cases of forcible entry and detainer, it is found, that A. O. late of — yeoman, and B. O. late of — yeoman, on the — day of — now last past, into a certain messuage, with the appurtenances, of A. I. of — aforesaid, in the county aforesaid, gentleman, situate, lying, and being at — aforesaid in the county aforesaid, with force and arms did enter, and him the said A. I. thereof then with strong hand did disseise and drive out, and him the said A. I. thus dri-

Foreign Service.

even out from the aforesaid messuage with the appurtenances, from the ——— day of ——— aforesaid, to this present day of the taking of the said inquisition, with strong hand and armed force did keep out, and do yet keep out, as by the inquisition aforesaid more fully appeareth of record: Therefore on the behalf of our said sovereign lord the king, I charge and command you, that taking with you the power of the county (if it be needful) you go to the said messuage and other the premisses, and the same with the appurtenances you cause to be rescised, and that you cause the said A. I. to be restored and put into his full possession thereof, according as he, before the entry aforesaid was seised, according to the form of the said statutes. And this you shall in no wise omit, on the penalty thereon incumbent. Given under my hand and seal at ——— in the said county, the ——— day of ——— in the ——— year of the reign of ———.

Foreign Service.

Artificers.

1. **B**Y the 5 G. c. 27. If any person shall contract with, entice, or endeavour to persuade any manufacturer or artificer in wool, iron, steel, brass, or any other metal, clockmaker, watchmaker, or any other artificer or manufacturer, to go out of this kingdom, into any foreign country out of his majesty's dominions, and shall (on prosecution in 12 months) be convicted thereof on indictment or information, in the courts at *Westminster*, assizes, or sessions of the county where the offence shall be committed; he shall for the first offence be fined not exceeding 100*l.* and be imprisoned for three months, and until the fine be paid; for the second offence, shall be fined at the discretion of the court, and be imprisoned 12 months, and till the fine is paid. S. 1, 2.

And if any subject, being such artificer or manufacturer, shall go into any country out of his majesty's dominions, to exercise or teach any the said manufactories to foreigners, or if any subject who shall be in any such foreign country, and there exercising any the said manufactories, shall not return in six months next after warning be given him, by the ambassador, minister, or consul, or person authorized by him, or by a secretary of state, and from thenceforth continually inhabit within this realm; he shall be incapable of any legacy, or of being executor, or administrator, and of taking any lands, by descent, devise, or purchase, and forfeit his lands and goods, and be deemed an alien, and out of the king's protection. S. 3.

And on complaint on oath before a justice, that any person is endeavouring to seduce or draw away any such manufacturer or artificer, or that he hath contracted or is preparing to go out of the kingdom; he may issue his warrant to bring such person before him or some other justice; and if it shall appear to such justice, by confession, or the oath of one witness, that such per-
son

son was guilty of any the said offences, he may bind him over to the next assizes or sessions, to answer the premisses; and if he shall upon indictment be there convicted of any such promise or contract, or preparation to go abroad beyond the seas, he shall give such security not to depart out of the realm, as such court shall think reasonable, and be imprisoned until such security be given. S. 4.

And by the 23 G. 2. c. 13. If any person shall contract with, or endeavour to persuade or seduce any artificer in the manufactures of *Great Britain*, to go into any foreign country, not belonging to the crown of *Great Britain*; and shall be thereof convicted, in 12 months, in the king's bench or at the assizes; he shall for every such person forfeit 500*l.* and be imprisoned in the common gaol for 12 months, and till payment of the forfeiture; and for a second or other subsequent offence, shall forfeit 1000*l.* and be imprisoned two years, and till payment. S. 1, 2.

And if any person shall put on board any vessel not bound directly to some of the *British* dominions, any tools or utensils, or part thereof, proper for either the woollen or silk manufactures; he shall forfeit the same, and 200*l.* *Id. f. 3.*

And any officer of the customs may seize, and secure in some of the king's warehouses, all such tools and utensils as shall be found on board any such vessel; and the same, after condemnation, shall be publickly sold. *Id. f. 4.*

And if the master or captain shall knowingly permit any the said tools or utensils to be put on board his ship; he shall forfeit 100*l.* and if it is a king's ship, he shall also forfeit his office, and be incapable of any office under the crown. *Id. f. 5.*

And if any officer of the customs shall take any entry outward, or sign any sufferance for shipping or exporting any the said tools, or knowingly permit the same to be done; he shall forfeit 100*l.* and his office, and be incapable of any office under the crown. *Id. f. 6.*

All which said penalties, on this act, shall be half to the king, and half to him that shall prosecute. *Id. f. 7.*

2. By the 9 G. 2. c. 30. If any subject shall enlist, or enter himself; or if any person shall procure any subject to enlist or enter himself, or hire or retain any subject, with intent to cause him to enlist or enter himself; or procure any subject to go beyond the seas or imbarck with intent and in order to be enlisted to serve any foreign prince, state, or potentate, as a soldier, without the king's leave under his sign manual; he shall be guilty of felony without benefit of clergy. S. 1.

And offences committed out of the realm may be tried in any county in *England*. S. 2.

But if any person so enlisted, or inticed to go beyond the seas in order to be enlisted, as a non-commission officer or private soldier, in any foreign service, shall in 14 days voluntarily discover upon oath, before any justice or other civil magistrate, the person by whom he was enlisted or inticed, so as he be convicted; he shall be indemnified. S. 3.

Forestalling, ingrossing, and regrating.

Derivation.

Forestalling is derived of two Saxon words; *fare*, a way or passage, and *stall*, a stoppage or hindrance:

Ingrossing is from the word *gross*, great or whole:

And *Regrating*, from the French word *regratement*, which signifies huckstery. 3 *Inst.* 195.

I shall treat, first, concerning these offences at the common law; and secondly, concerning the same by statute.

I. Concerning these offences at common law.

These offences at common law.

1. At the common law, all endeavours whatsoever to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency thereto, whether by spreading false rumours, or by buying things in a market before the accustomed hour, or by buying and selling again the same thing in the same market, or by any other such like devices, are highly criminal, and punishable by fine and imprisonment. 1 *Haw.* 234, 5.

2. By the common law, a merchant bringing victuals into the realm, may sell the same in gross; but no person can lawfully buy within the realm any merchandize in gross, and sell the same in gross again, without being liable to be indicted for the same. 3 *Inst.* 196.

3. And the bare ingrossing of a whole commodity, with an intent to sell it at an unreasonable price, is an offence indictable at common law, whether any part thereof be sold by the ingrosser or not. 1 *Haw.* 235.

4. And so jealous is the common law of all practices of this kind, that it will not suffer corn to be sold in the sheaf; perhaps for this reason, because by such means the market is in effect forestalled. 1 *Haw.* 235.

5. Anciently the ingrosser and regrater were comprehended under the word forestaller; but now they are distinguished by the following statute.

By statute:

II. Concerning these offences by statute.

Forestalling, what.

1. *Whosoever shall buy, or cause to be bought, any merchandize, victual, or any other thing whatsoever, coming by land or by water toward any market or fair, to be sold in the same, or coming toward any city, port, haven, creek, or road, from any parts beyond the sea to be sold; or make any bargain, contract or promise, for the having or buying the same, or any part thereof, so coming as is aforesaid, before the said merchandize, victuals, or other things shall be in the market, fair, city, port, haven, creek, or road, ready to be sold; or shall make any motion by word, letter, message, or otherwise, to*
any

any person for the enhancing of the price, or dearer selling of any thing abovementioned; or else dissuade, move, or stir any person coming to the market or fair, to abstain or forbear to bring or convey any of the things above rehearsed, to any market, fair, city, port, haven, creek, or road to be sold, as aforesaid, — shall be deemed a forestaller. (A) 5 & 6 Ed. 6. c. 14. f. 1.

2. Whosoever shall ingross, or get into his hands by buying, contracting, or promise-taking, other than by demise or grant, or lease of land or tythe, any corn growing in the fields, or any other corn or grain, butter, cheese, fish, or other dead victuals whatsoever, to the intent to sell the same again, shall be deemed an unlawful ingrosser. (B) 5 & 6 Ed. 6. c. 14. f. 3.

And it is said not to be sufficient in an indictment or information, to say that the defendant bought so much goods, but the words of the statute are to be pursued, which are—*shall ingross or get into his hands by buying*. But it is not necessary to set forth, that the defendant did not come by it, by a demise of land, or the like; but the defendant, if he have any such matter to allege, must give it in evidence. 1 Haw. 237, 238.

3. Whosoever shall by any means regrate, obtain, or get into his hands or possession, in a fair or market, any corn, wine, fish, butter, cheese, candles, tallow, sheep, lambs, calves, swine, pigs, geese, capons, hens, chickens, pigeons, conies, or other dead victual whatsoever, that shall be brought to any fair or market to be sold, and do sell the same again in any fair or market holden or kept in the same place, or in any other fair or market within 4 miles thereof, shall be deemed a regrater. (C) 5 & 6 Ed. 6. c. 14. f. 2.

4. And if any shall be guilty of any the said offences, he shall for the first offence be imprisoned 2 months, and forfeit the value of the goods; for the second offence, be imprisoned half a year, and forfeit double value; and for the third offence, shall be set on the pillory, forfeit all his goods, and be imprisoned during the king's pleasure. 5 & 6 Ed. 6. c. 14. f. 4, 5, 6.

Half the said forfeitures to go to the king, and half to him that will sue, in two years after the offence. *Id.* f. 9, 14.

And the sessions may hear and determine the same, by inquiry, presentment, bill, or information, and by examination of two witnesses, and may make process thereupon, as tho' they were indicted; and estreat the king's moiety, and award execution of the other moiety for the party, by *feri facias*, or *capias*, as the courts at *Westminster* may do. *Id.* f. 10.

5. From hence it seems clearly to follow, as well as from the general rules of law, that no information for any of the said offences against the said statute can be good, without shewing in certain the quantity of the thing for which the penalty is supposed to be incurred, not only because otherwise the judgment to be given on such an information can never be pleaded in bar of any other, because it cannot appear that both of them were brought for the same thing; but also, because it cannot appear to the court what forfeiture the defendant ought to incur, unless the extent of the offence be specially set forth. 1 Haw. 238.

Ingrossing, what.

Regrating, what.

Penalty;

Form of the indictment or information.

Exceptions and
limitations.

6. But nothing in the act abovementioned shall extend to the buying of any such thing (otherwise than by forestalling) by any fishmonger, butcher, or poulterer, as concerns their trade, who shall sell the same again upon reasonable prices by retail; nor to the buying of wine, or other dead victual, by any innholder or victualler, to retail the same in his house; nor to the buying of any dried or salted fish (not forestalled), and sold for reasonable prices; nor to the buying of any corn, fish, butter, or cheese, by persons duly licensed, and not forestalling. 5 & 6 Ed. 6. c. 14. s. 7.

Neither shall it extend to wines, oils, sugars, spices, currans, nor other foreign victuals; fish and salt only excepted. 13 El. c. 25. s. 21.

And by the 15 C. 2. c. 7. When the quarter of wheat (*Winchester* measure) doth not exceed 48s. rye 32s. barley or malt 28s. buck wheat 28s. oats 13s. 4d. pease or beans 32s. any person (not forestalling, nor selling the same again in the same market in 3 months) may buy such corn, at or under such price, and lay it up, and sell the same again, without incurring any penalty. S. 4.

Also, it hath been resolved, that such *victual* only, as is necessary for the food of man, is within the aforesaid statute of 5 & 6 Ed. 6. and therefore that apples and cherries, and such like fruit are not: but that salt is a victual within the meaning of it. 1 Harw. 237.

Information may
be laid in any
county.

7. By 31 El. c. 5. which ordains that informations for offences against penal statutes, must be laid in the proper county, it is provided, that nevertheless an information on the said statute of Ed. 6. against forestalling, ingrossing, or regrating, where the penalty shall appear to be 20*l.* or above, may be laid out of the proper county, and in any other county at the pleasure of the informer.

A. Indictment for forestalling.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of the parish of _____ in the county aforesaid, yeoman, on the _____ day of _____ in the _____ year of the reign of _____ at the parish aforesaid, in the county aforesaid, did buy and cause to be bought of and from one A. S. twenty oxen, for the sum of 200*l.* of lawful money of Great Britain, as he the said A. S. then and there was driving the said twenty oxen towards the market of M. to sell the said twenty oxen in the said market, and before the said twenty oxen were brought into the said market, where the same should be sold; in contempt of our said lord the king and his laws; to the evil example of all others in the like case offending, against the peace of our said lord the king, his crown and dignity, and against the form of the statute in that case made and provided.

B. Indictment

B. Indictment for ingrossing.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of — in the county aforesaid, yeoman, on the — day of — in the — year of the reign of — at — aforesaid in the county aforesaid, did ingross and get into his hands, by buying of and from one A. S. 50 quarters of wheat, to the intent to sell the same again; to the evil example of all others in the like case offending, against the peace of our said lord the king, his crown and dignity, and against the form of the statute in that case made and provided.

C. Indictment for regrating.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of the parish of — in the county aforesaid, yeoman, on the — day of — in the — year of the reign of — at the parish aforesaid in the county aforesaid, to wit, in a certain market then and there holden, did buy, obtain, and get into his hands and possession ten geese and twenty chickens, of and from one A. S. for the sum of 30 s. of lawful money of Great Britain (the said geese and chickens then being brought to the said market by the said A. S. to be sold); and that afterwards, to wit, on the same — day of — in the year aforesaid, he the said A. O. at the parish aforesaid, in the county aforesaid, in the said market there, unlawfully did regrate the said geese and chickens, and sell the same again to one A. B. for the sum of 40 s. of like lawful money of Great Britain, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, against the peace of our said lord the king, and against the form of the statute in that case made and provided.

Forests. See Game.

Forfeiture.

Forfeiture.

The forfeitures for particular offences may be found under their respective titles; here it is treated of forfeitures in general.

I. Of forfeiture of lands and goods.

II. Of loss of dower.

III. Of corruption of blood.

I. Of forfeiture of lands and goods.

Forfeiture of
lands.

1. **I**T seems agreed, that by the common law, all lands of inheritance, whereof the offender was seised in his own right, and also all rights of entry to lands in the hands of a wrong doer, are forfeited to the king, by an attainder of high treason, and to the lord of whom they are immediately holden, by an attainder of petit treason or felony. *2 Haw. 448.*

But it seems clear, that the lord cannot enter into the lands holden of him, upon an escheat for petit treason or felony, without a special grant, till it appear by due process, that the king hath had his prerogative of the year, day, and waste. *2 Haw. 448.*

Concerning which year, day, and waste, it is enacted by the *17 Ed. 2. c. 16.* that the king shall have the goods of all felons attainted, and fugitives, wheresoever they be found. And if they have freehold, it shall be forthwith taken into the king's hands, and the king shall have all profits of the same by one year and one day; and the land shall be wasted and destroyed in the houses, woods, and gardens, and in all manner of things, belonging to the same land. And after the king hath had the year, day, and waste, the land shall be restored to the chief lord of the fee, unless that he fine before with the king, for the year, day, and waste.

Forfeiture of
goods.

2. As to forfeiture of goods, it seems agreed, that all things whatsoever, which are comprehended under the notion of a personal estate, whether they be in action or possession, which the party hath, or is intitled to, in his own right, and not as executor or administrator to another, are liable to such forfeiture, in the following cases:

(1) Upon a conviction of treason or felony. *2 Haw. 450.*

(2) Upon a flight found before the coroner, upon view of a dead body. *Id.*

(3) Upon an acquittal of a capital felony, if the party is found to have fled. *Id.*

(4) Also a person indicted of petit larceny, and acquitted, yet if it be found he fled for it, forfeits his goods, as in case of grand larceny. *1 H. H. 530. 2 Haw. 451.*

But

But it is certain that the party may in all cases, except that of the coroner's inquest, traverse the finding of the flight. Also it seems agreed, that the particulars of the goods found to be forfeited may be also traversed. 2 *Haw.* 451.

(5) Upon a presentment by the oaths of 12 men, that a person arrested for treason or felony, fled from, or resisted those who had him in custody, and was killed by them in the pursuit or scuffle. 2 *Haw.* 451.

(6) By being waived or left by a felon in his flight, whereby he forfeits the goods so waived, whether they be his own, or the goods of others stolen by him, which shall not be restored to the right owners but upon a proper prosecution. 2 *Haw.* 451.

(7) Also, a convict within clergy, forfeits all his goods, tho' he be burnt in the hand; yet thereby he becomes capable of purchasing other goods. 2 *H. H.* 388, 389.

But on burning in the hand, he ought to be immediately restored to possession of his lands. 2 *H. H.* 389.

3. Upon outlawry in treason or felony, the offender shall lose Forfeiture upon and forfeit as much as if he had appeared, and judgment had been outlawry. given against him, as long as the outlawry is in force. *Wood* 1112.

And those that tarry till the exigent, in treason, felony, or petit larceny, forfeit their goods, tho' they render themselves to justice, and are acquitted; for it was a flight in law. *Wood* 1112.

4. But where the killing a man in his own defence is in the law no felony, there is no forfeiture, unless he fled; for that is a distinct forfeiture, altho' the party be not guilty of the fact. Forfeiture in se defendendo. 1 *H. H.* 493.

5. It seems agreed, that the forfeiture, upon an attainder either of treason or felony, shall have relation to the time of the offence, for the avoiding of all subsequent alienations of the lands; but to the time of the conviction or flight found only, as to *chattels*; unless the party were killed in flying or resisting, in which case it is said, that the forfeiture of the chattels shall relate to the time of the offence. 2 *Haw.* 454. To what time the forfeiture shall relate.

6. But tho' the goods of an offender be not forfeited, till the conviction, or flight found by inquest, yet whether they may be seized upon the offence committed, hath been controverted; concerning which Lord *Hale* saith thus: What is to be done with the felon's goods before forfeiture.

It seemeth clear, that at the common law, if a man had committed felony or treason, or tho' possibly he had committed none, yet if he had been indicted, the sheriff, coroner, or other officer, could not seize and carry away the goods of the offender or party accused:

Again, he could not in that case have removed the goods out of the custody of the offender or party accused, and deliver them over to the constables or to the *villata*, to answer for them:

But if the party were indicted, the sheriff or other officer might make a simple seizure of them only to inventory and appraise them, and leave them to the custody of the servants or bailiff of the party indicted, in case he would give security against their being

being imbeziled, or in default thereof he might deliver them to the constable or vill to be answerable for them, but yet so that the party accused and his family have sufficient out of them for their livelihood and maintenance:

And possibly the same law was, tho' he were not indicted, but *de facto* had committed a felony, but with this difference, if he had been indicted, this kind of seizure might have been made, whether he committed the felony or not:

But in case there were no indictment, then it is at the peril of him that seizeth, if he committed not the felony:

And then as to the statute of 1 R. 3. c. 3. it is as follows; *No sheriff or other person shall take or seize the goods of any person arrested or imprisoned for suspicion of felony, before he be convicted or attainted, or before the goods be otherwise forfeited; on pain of double value to the party grieved:*

Mr. Stamford thinks this is but in affirmance of the common law, only that it gives a penalty; but it seems to be somewhat more than so, for this prohibits the seizure of the goods of a party imprisoned, tho' he were also indicted, but not yet convicted; where unquestionably the common law allowed such a seizure, if the party or his friends did not secure the forthcoming of the goods, where the party was indicted:

But upon this statute these things are considerable; 1. As to persons at large, it seems to me (says he) that if they flee not, there can be no seizure at all made, whether they are indicted or not; for the statute did not intend a greater privilege to a party imprisoned, than to him that is at large. 2. That if he be at large, and fly for it, yet his goods cannot be seized and removed, whether he be indicted or not indicted. 3. That if he be indicted, and at large, yet the goods cannot be removed, but only viewed, appraised, and inventoried, in the house or place where they lie:

And yet I know not how it comes to pass, says he, the use of seizing the goods of persons accused of felony, tho' imprisoned or not imprisoned, hath so far obtained notwithstanding this statute, that it passeth for law and common practice, as well by constables, sheriffs, and other the king's officers, as by lords of franchises, that there is nothing more usual:

Upon the whole, he says, that the opinion of my Lord Coke, in his 3 *Inst.* 228. hath truly stated the law, at least as it stands upon the statute of 1 R. 3. viz. 1. That *before* the indictment, the goods of any person cannot be searched, inventoried, or in any sort seized. 2. That *after* the indictment, they cannot be seized and removed, or taken away, before conviction or attainder:

But then it may be said, to what purpose may they be searched and inventoried after indictment, if they may not be removed, but are equally liable to imbeziling as before:

I think (he says) he is not bound to find sureties, neither hath the officer at this day any power to remove them in default of sureties, and commit them to the vill, but only to inventory them, and leave them where he found them (unless in case of a second

capias on the 25 Ed. 3. c. 14.) for the prisoner or party indicted may sell them *bona fide*; and if he may do so, the vendee may take them, and the *villata* cannot refuse the delivering of them to the vendee, tho' the goods had been delivered to them:

But there is this advantage by the viewing and appraising, that thereby the king is ascertained what the goods are, and may pursue them that take or imbezil them, by information (if the party happen to be convict) and try the property with them, whether they are really sold, or sold only fraudulently without valuable consideration to prevent the forfeiture. 1 H. H. 363, 4, 5, 6, 7.

II. Of loss of dower.

1. Albeit a person shall be attainted of felony, yet his wife shall not forfeit her dower. 1 Ed. 6. c. 12. s. 17. Forfeiture of dower in felony.
2. But on his attainder of any treason, she shall forfeit her dower. 5 & 6 Ed. 6. c. 11. s. 13. In treason. But in some kinds of treason (particularly with regard to the coin) there is a special saving of the wife's dower by statute.

III. Of corruption of blood.

1. It is agreed, that by an attainder of treason or felony, the blood is so far stained or corrupted, that the party loses all the nobility or gentility he might have had before, and becomes ignoble. Corruption of blood. 2 Harw. 456.
2. Also, that he can neither inherit as heir to an ancestor, nor have an heir. 2 Harw. 456.
3. But the king's pardon, tho' it doth not restore the blood, yet as to issues born after, hath the effect of a restitution. 1 H. H. 358.
4. But restitution of blood in its true nature and extent, can only be by act of parliament. 1 H. H. 358. 2 Harw. 458.

Forgery.

1. **F**ORGERY is an offence at common law, and an offence also by statute.
 2. Forgery at the common law, is an offence in falsely and fraudulently making or altering any matter of record, or any other authentick matter of a publick nature; as a parish register, or any deed, will, privy seal, certificate of holy orders, protection of a parliament man, and the like. 1 Harw. 182, 184.
- As for writings of an inferior nature, as private letters, and such like, the counterfeiting of them is not properly forgery; therefore in some cases it may be more safe to prosecute such offenders for a misdemeanor, as cheats. For by reason of the uncertainty of opinions, concerning proper forgeries at common law, indictments are generally brought upon some of the following statutes,

tutes, and very few at common law. But if the indictment is at common law, and the offender is convicted, he may be pilloried, fined, and imprisoned. *Wood* 710. 1 *Haw.* 184.

But as to the power of justices of the peace in this matter, Mr. *Hawkins* says, it hath been settled of late, that they have no jurisdiction over forgery at the common law; the principal reason of which resolution (he says) as he apprehended, was, that inasmuch as the chief end of the institution of the office of these justices was for the preservation of the peace against personal wrongs and open violence, and the word *trespass* in its most proper and natural sense, is taken for such kind of injuries, it shall be understood in that sense only in the commission, or at the most to extend to such other offences only as have a direct and immediate tendency to cause such breaches of the peace, as libels, and such like, which on this account have been adjudged indictable before justices of the peace. 2 *Haw.* 40. 1 *Salk.* 406.

But Mr. *Barlow* says nevertheless, that it seemeth clear, that a justice of the peace may take an information thereof, bind over the informers, examine the offender, certify his examination to the proper judges, and commit him to prison in order to abide his trial. *Barl.* 244.

3. The statutes that make forgery an offence are these that follow:

The first is that famous statute of the 5 *El.* c. 14. which by an example worthy to be imitated, doth (in order to prevent confusion) repeal all former statutes against forgery. By this it is enacted, that if any person upon his own head and imagination, or by false conspiracy and fraud with others, shall wittingly, subtilly, and falsely forge or make, or subtilly cause, or willingly assent to be forged or made, any false deed, charter, or writing sealed, court roll, or the will of any person in writing, to the intent that the state of freehold or inheritance of any person, of any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or interest of any person in the same may be molested, troubled, defeated, recovered, or charged; or shall pronounce, publish, or shew forth in evidence the same as true, knowing the same to be false or forged, to the intent as above (except lawyers or attornies for their clients, not being privy to the forgery); and shall be thereof convicted, either upon action at the suit of the party, or otherwise according to the order and due course of the laws of this realm, — he shall pay to the party double costs and damages, and be set in the pillory, and have both his ears cut off, and his nostrils slit and seared with a hot iron, and shall forfeit the profits of his lands during life, and be imprisoned also during life. S. 2.

And all justices of oyer and terminer, and justices of assize, shall have power to inquire of, hear, and determine all offences in this act. S. 10.

Upon his own head] When the proceedings were in Latin, *super proprium suum caput* was allowed to be good upon an indictment on this statute; the law having more regard that the statute be strictly pursued, than rendred into proper Latin. 1 *Haw.* 187.

Forge

Forge or make] Making a second deed, and antedating it, with intent to make it take place of a former deed, is forgery within this statute. 3 *Inst.* 167.

Or subtilly cause, or willingly assent] To *cause*, is to procure or counsel one to forge; to *assent*, is to give his assent or agreement afterwards, to the procurement or counsel of another; to *consent*, is to agree at the time of the procurement or counsel, and such is in law a procurer. 3 *Inst.* 169.

But Lord *Hale* says, that an *assent* after the fact committed, makes not the party assenting guilty or principal in the forging; but it must be a precedent, or concomitant assent. 1 *H. H.* 684.

False deed, charter, or writing] It seems to be no way material, whether a forged instrument be made in such a manner, that if it were in truth such as it is counterfeited for, it would be of validity or not; and upon this ground it hath been adjudged, that the forgery of a protection in the name of a member of parliament, who in truth at the time was not a member, is as much a crime as if he were. 1 *Haw.* 184.

Writing sealed] These are large words; and the making of a false customary of a manor in writing under seal, containing diverse false customs, to the disherison of the lord of the manor, and that the same had been allowed and permitted by the lord of the manor, which was also false, was resolved to be within these words *a false writing sealed*. 3 *Inst.* 171.

Sealed] It is required that the deed, charter, or writing must be sealed, that is, have some impression upon the wax; for wax, without an impression is not a seal. 3 *Inst.* 169.

Court roll, or will] Here are two writings which need not be sealed, because they may take effect without any seal, for that they be no deeds; and no writing can have the force of a deed, without a seal. 3 *Inst.* 170.

Will] If any person which writeth the will of a sick man, inserteth a clause therein concerning the devise of lands, without any direction of the deviser, this is forgery, altho' he did not forge the whole will. 3 *Inst.* 170.

Pronounce or publish] That is, when one by words or writing pronounceth or publisheth the deed to any other as true. 3 *Inst.* 171.

Knowing the same to be forged] This knowledge may come by two means; either of his own knowledge, or of the relation of another; for if another tell him it is forged, and he publish it afterwards as true, and it prove to be forged indeed, he is in danger of this statute. 3 *Inst.* 171. 1 *Haw.* 187.

But Lord *Hale* says, that tho' such a relation may be an evidence of fact to prove his knowledge, yet it is not conclusive; for perchance there might be circumstances of fact, that might make the person relating it, or his relation, not credible: So that the *knowing* must be upon the whole matter left to the jury, upon the circumstances of the case. 1 *H. H.* 685.

Justices

Justices of oyer and terminer] Albeit justices of the peace, by their commission, have power to hear and determine felonies and trespasses, yet they are not included under the name of justices of oyer and terminer; for justices of oyer and terminer are known by one distinct name, and justices of the peace by another. 3 Inst. 103.

And by the same statute it is further enacted, that if any person, upon his own head or imagination, or by false conspiracy or fraud with any other, shall wittingly, subtilly, and falsely forge or make, or cause or assent to be made and forged any false charter, deed, or writing, to the intent that any person may have or claim any estate or interest for term of years in any manors, lands, tenements or hereditaments, not being copyhold, or any annuity in fee simple, fee-tail, or for term of life, lives, or years; or any obligation, or bill obligatory, or any acquittance, release, or other discharge of any debt, account, action, suit, demand, or other thing personal; or shall pronounce, publish, or give the same in evidence as true, knowing the same to be false and forged, he shall, on conviction in like manner, pay to the party double costs and damages, and be set on the pillory, and have one of his ears cut off, and be imprisoned for a year. S. 3.

Obligation or bill obligatory] The forgery of a deed of gift of mere personal chattels, is not within this statute. 1 Harw. 186.

And if after verdict, the plaintiff shall release the judgment or execution, or suffer a discontinuance, it shall only discharge his own costs and damages, and not the other punishments. S. 6.

And by the same statute it is further enacted, that if any person shall after conviction offend again in any of the ways above-mentioned, he shall be guilty of felony without benefit of clergy. S. 7, 8.

4. Thus stood the matter upon the statute of 5 E1. Afterwards by many subsequent statutes (several of which were occasional only, and adapted to the particular juncture and circumstances of the time in which they were made, but which are referred to and enforced by the subsequent statutes on the same subject) divers other forgeries were made felony without benefit of clergy for the first offence; and others had other punishments assigned them: Which are as follows;

It shall be felony without benefit of clergy, to forge or counterfeit

(1) Any bank bills, or notes, or the seal of the governor and company of the bank of England. 7 & 8 W. c. 31. s. 36. 8 & 9 W. c. 20. s. 36. 11 G. c. 9. s. 6. 12 G. c. 32. s. 9.

And in general, any bank note, bill of exchange, dividend warrant, or any bond or obligation under the seal of the bank, or indorsement thereon; or knowingly offering to dispose thereof. 15 G. 2. c. 13. s. 12.

(2) India bonds. 12 G. c. 32. s. 9.

(3) Bonds, receipts, warrants, or seal of the South-Sea company. 9 An. c. 21. s. 57. 6 G. c. 4. s. 56. 6 G. c. 11. s. 50. 12 G. c. 32. s. 9.

(4) Exchequer bills: by the several acts which direct the issuing the same.

(5) Any power to transfer stocks. 8 G. c. 22. s. 1. 9 G. c. 12. s. 4.

(6) Lottery tickets and orders: by the several lottery acts.

(7) Policy of assurance. 6 G. c. 18. s. 13.

(8) Mediterranean passes. 4 G. 2. c. 18.

(9) Army debentures. 5 G. c. 14. s. 10. 9 G. c. 5. s. 19.

(10) Marriage licence or registry of a marriage. 26 G. 2. c. 33.

(11) Stamps on vellum, parchment, and paper: by the several stamp acts.

(12) Stamps on linen imported. 10 An. c. 19. s. 97. And selling it knowingly with a counterfeit stamp; 100 l. and the pillory. *Id.*

And by the 9 & 10 W. c. 41. Forgers of seamens wills, or letters of attorney, shall over and above the penalties by former laws, forfeit 200 l. with costs; half to the king, and half to him that will sue. S. 3.

5. And besides these particular laws, in the 2 G. 2. a general law was made (for 5 years, and was afterwards revived and made perpetual), by which it is enacted, that *if any person shall falsely make, forge, or counterfeit, or cause or procure the same to be done, or willingly aid or assist in the false making, forging, or counterfeiting any deed, will, bond, writing obligatory, bill of exchange, promissory note, indorsement or assignment of any bill of exchange or promissory note, acquittance or receipt for money or goods, with intent to defraud any person; or shall utter or publish the same as true, knowing the same to be forged; — he shall be guilty of felony without benefit of clergy; but not to work corruption of blood, or disherison of heirs.* 2 G. 2. c. 25. s. 1, 5.

6. And by the 7 G. 2. c. 22. it is further enacted, by way of addition to the foregoing, that *if any person shall falsely make, alter, forge, or counterfeit, or willingly act or assist in the false making, altering, forging, or counterfeiting any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for any note, bill, or other security for payment of money, or any warrant or order for payment of money, or delivery of goods, with intent to defraud any person; or shall utter or publish the same as true, with intent to defraud any person, knowing the same to be false; — he shall be guilty of felony without benefit of clergy: and this, without any saving of the corruption of blood, or disherison of heirs.*

7. Forgery is excepted out of the act of general pardon, 20 G. 2.

Fornication. See Lewdness.

Fraud. See Cheat.

Fruit and Fruit trees. See Wood.

Fuel.

BY the 43 *El. c. 14.* All faggots to be sold shall contain in compass, besides the knot of the bond, 24 inches of assize; and every faggot stick within the bond, shall contain full 3 foot of assize, except only one stick to be one foot long, to stop or harden the binding.

By the 9 *An. c. 15.* All billets (except those made of beech, 10 *An. c. 6.*) that lie exposed in publick places where they are usually bought or sold, shall be assized, and cut or marked in manner following; That is to say,

All billets of what scantling or denomination soever, shall contain in length 3 foot and 4 inches, and be of the following dimensions; *viz.*

Names of the billets.	Round.		Half round		Quarter cleft		
	in.	qr.	in.	qr.	in.	qr.	
A single	7	2	0	0	0	0	No notch.
A cast	10	2	12	1	12	0	One notch.
A trois	13	0	15	0	14	3	Three in the middle
2 cast	15	0	17	1	17	0	Two notches.
3 cast	18	1	21	1	21	0	{ One at each end, and one in the middle.
4 cast	21	1	24	2	24	0	
5 cast	23	3	27	2	27	0	4 notches.
6 cast	26	0	30	0	29	2	5 notches.
7 cast	28	0	32	2	32	0	6 notches.
8 cast	30	0	34	3	34	0	7 notches.
9 cast	31	3	36	3	36	1	8 notches.
10 cast	33	2	38	3	38	0	9 notches.
11 cast	35	1	—	—	—	—	10 notches.
12 cast	36	3	—	—	—	—	11 notches.
13 cast	38	1	—	—	—	—	12 notches.
14 cast	39	3	—	—	—	—	13 notches.
15 cast	41	0	—	—	—	—	14 notches.
16 cast	42	2	—	—	—	—	15 notches.
17 cast	43	3	—	—	—	—	16 notches.
18 cast	45	0	—	—	—	—	17 notches.
19 cast	46	1	—	—	—	—	18 notches.
20 cast	47	2	—	—	—	—	19 notches.
							20 notches.

And if they shall not be thus assized and marked, then on information to a justice of the peace, mayor, or other head officer, he shall call before him six good and lawful men of the town, and shall swear them truly to inquire and present, whether the same be of good and sufficient assize; and if they shall present that any of them

them is not sufficient, the same so being deficient shall be forfeited, and be delivered to the overseers, to be by them distributed to the poor. *Id. s. 2.*

And by the 43 *El. c. 14.* The billets shall be measured within six inches of the midst; and the surplufage which shall happen between any two next measures, being above the one, and under the other, shall be taken for the benefit of the buyer.

Fuller's earth. See *Woollen manufacture.*

Game.

THE statutes relating to this title are very numerous, and the sense sometimes a little perplexed, so that perhaps upon a view of the whole, it may seem, that about four or five new acts, comprehending the several heads here under mentioned, and repealing all the preceding ones, would conduce to render this branch of our laws more intelligible and useful.

After having first premised (in order to avoid frequent repetitions throughout this whole title) that it is enacted by the statute of the 8 *G. c. 19.* that where any person for any offence against any law in being at the making of the said act, for the better preservation of the game, shall be liable to pay any pecuniary penalty or sum of money, on conviction before a justice of the peace, the prosecutor may either proceed to recover the same in such manner, or he may sue for the same (before the end of the second term after the offence committed, 26 *G. 2. c. 2.*) by action of debt, or on the case, bill, plaint, or information, in any court of record at *Westminster*, wherein if he recovers he shall have double costs; (This being premised) I will treat of this subject under the following heads; containing,

- I. Certain preliminary observations.
- II. The laws concerning gamekeepers.
- III. The qualification by estate or degree to kill game; with the punishment of persons unqualified.
- IV. Laws for preserving the four footed game in particular.
- V. Laws for preserving the winged game in particular.
- VI. Laws for preserving the game of fish in particular.

Under which three last heads are comprehended those restrictions which seem to concern all persons whatsoever, whether qualified or not: for altho' a man be qualified to kill game, yet he must kill it in a lawful manner, and not in such ways as tend utterly to destroy it.

I. Preliminary observations.

Forest, what.

1. A *forest* is a certain territory of woody grounds, and fruitful pastures, privileged for wild beasts and fowls of forest, chase, and warren, to rest and abide there in the safe protection of the king, for his delight and pleasure: which territory of ground so privileged, is meered and bounded with unremoveable marks, meers, and boundaries, either known by matter of record, or by prescription; and also replenished with wild beasts of venary or chase, and with great coverts of vert for the succour of the said beasts there to abide: for the preservation and continuance of which, there are particular officers, laws, and privileges belonging to the same, requisite for that purpose, and proper only to a forest, and to no other place. *Manw.* 143.

Note, That *vert* comprehends every thing which bears green leaves in the forest. *Manw.* 146.

Beasts of forest.

2. Beasts of forest are properly hart, hind, buck, hare, boar and wolf; but legally, all wild beasts of venary. 1 *Inst.* 233.

Purlicu, what.

3. *Purlicu* comes from the *French*, *pur*, clear, entire, and exempt; and *lieu*, a place; that is, a place entire, clear, or exempt from the forest: and signifies those grounds which Henry the second, Richard the first, or king John added to their ancient forests, over other mens grounds; and were disafforested by the statute of *charta de foresta*. 4 *Inst.* 303. *Manw.* 242.

But nevertheless the *purlicu* as to some purposes is forest still, and is only disafforested as to the particular owners of the land and for their benefit, and not generally to give liberty to any man to hunt the wild beasts, and spoil the vert. And if those beasts do escape out of the forest into the *purlicu*, the king hath a property in them still against any man, but against the owners of the woods and lands in which they are; and such owners have a special property in them *ratione loci*, but yet so that they hunt them fairly, and not forestall them in their return towards the forest. *Manw.* 292.

But a *purlicu* man may not hunt in every man's lands within the *purlicu*, but in his own lands only; and therefore if he find the beasts of the forest in his woods or lands in the *purlicu*, in such case he hath a property in them against any other man *ratione soli* (the king only excepted.) And if he begins the hunting in his own lands, then by reason of that property he may pursue his hunting thro' any man's woods or lands, so as he doth not enter into any forest, chase, park, or warren. And if he kill the beast in another man's land, and out of such privileged place, he may take and carry away the same by reason of the first property. But if the beasts recover the forest, he must call back his dogs, for they are then the king's wild beasts again. And if he do
not

not call back and rebuke his dogs, and they kill the beast in the forest, he is a trespasser, tho' himself never came within the bounds thereof. But if in hunting towards the forest, the dogs fasten on it before it is within the bounds thereof, and the dogs still hanging on are drawn by the deer into the forest, and it is killed there, then by reason of the first property which he had *ratione soli*, and also by the pursuit and possession thereof before it entred the forest, he may lawfully enter and take it.

Manw. 194, ——— 7.

4. A *chase* (from *chasser*, to chase) is a privileged place for receipt of deer and beasts of the forest, and is of a middle nature betwixt a forest and a park. It is commonly less than a forest, and not endowed with so many liberties, as officers, laws, courts; and yet is of a larger compass than a park, having more officers and game than a park. Every forest is a chase, but every chase is not a forest. It differeth from a park in that it is not inclosed; for if it is inclosed, it is a good cause of forfeiture; tho' it must have certain metes and bounds, but it may be in other mens grounds as well as in one's own. *Read. Game.* *Manw.* 49.

5. Beasts of chase are the buck, doe, fox, martern, and roe; Beasts of chase. the two last of which are not now in *England.* *Manw.* 50.

6. A *park* (from the *French*, *parquer*, to inclose) is a large Park, what. parcel of ground privileged for wild beasts of chase by the king's grant, or by prescription. *Read. Game.*

7. The beasts of park properly extend to the buck, doe, fox; Beasts of park. but in a common and legal sense to all the beasts of the forest. *Read. Game.*

8. A park must be inclosed; for if it lies open, it is a good Park to be inclose. cause of seizure into the king's hands, as a thing forfeited: and the owner cannot have an action against those that hunt in his park, if it lies open. *Read. Game.*

9. Deer in a park shall go to the heir, and not to the executor. Deer shall go to the heir. *1 Inst.* 8.

10. A *warren* is a place privileged by prescription or grant of Warren, what. the king, for the preservation of the beasts and fowl of the warren; viz. hares, conies, partridges, and pheasants. *Read. Game.*

11. A free warren may lie open, there being no necessity of Need not to be inclosing it. *Read. Game.* inclosed.

12. Conies in a warren (as hath been said before of deer in Conies shall go the park) shall go to the heir, and not to the executor. *1 Inst.* 8. to the heir.

13. It is not lawful for any man to erect a park, chase, or Licence to erect. warren, without a licence under the great seal of the king; because the common law gives no way to matters of pleasure, for that they bring no profit to the commonwealth. *2 Inst.* 199.

14. A forest is the highest franchise of princely pleasure; the Which of these next to that is a free chase; a chase in one degree is the same is the highest franchise. as a park, only a park is inclosed, and a chase is always open; the next in degree to a free chase, is a park; and next unto a park, is the franchise of a free warren. *Manw.* 148.

15. A person may have common in a chase, as well as in a Common in a forest; but a forest is governed by the forest law, and a chase and chase. park by the common law. *4 Inst.* 314. *Manw.* 49.

Trespass. in
what case.

16. If I find a pheasant in my lands, and I let my hawk fly, I may follow the flight into another man's land, by reason of the first property which I had in the pheasant *ratione soli*; and if my hawk kill the pheasant in another man's land, I may enter and take it, by reason of that property and pursuit; and in that case, I shall not be punished as a trespasser for taking and carrying away the pheasant, but only for entering the ground. But if the pheasant fly into a warren (which is a privileged place for birds of warren) and the hawk kill it there, the falconer shall not have the pheasant, but the owner of the warren. And the law is the same, in the cases of all wild beasts of the forest and chase. *Marw. 193, 196.*

No trespass in
following beasts
of prey.

17. Notwithstanding the common law allows of the hunting of foxes and badgers, being beasts of prey, in another man's ground, because the destroying of them is looked upon as a publick benefit; yet the digging and breaking the ground to unearth them is held to be unlawful, and the owner of the ground may maintain an action of trespass in that case. *Cro. Ja. 321.*

II. Concerning gamekeepers.

Who may ap-
point a game-
keeper.

1. All lords of manors, or other royalties, not under the degree of an esquire, may by writing under their hands and seals (A) authorize one or more gamekeeper or gamekeepers within their respective manors or royalties. *22 & 23 C. c. c. 25. s. 2.*

With power to
kill game.

2. And may empower him thereby, upon their own manors, to kill hare, pheasant, partridge, or any other game:

But if the gamekeeper shall, under colour thereof, kill or take the same for the use of the lord, and afterwards sell or dispose thereof without the lord's consent; and be convicted, on complaint of such lord, and on oath of one witness, before one justice; he shall be committed to the house of correction for three months, to be kept to hard labour. *5 An. c. 14. s. 4.*

One gamekeeper
in one manor;
and to be entred
with the clerk of
the peace.

3. But no lord of a manor shall make above one person to be a gamekeeper within any one manor, with power to kill game. And the name of such person shall be entred with the clerk of the peace where the manor lies; the entry to be made and viewed without fee; and a certificate thereof shall be granted by the clerk of the peace, on payment of one shilling:

And if any other gamekeeper, whose name is not so entred, *who shall not be otherwise qualified* by the laws of this kingdom to kill game, shall kill, sell, or expose to sale any hare, pheasant, partridge, moor, heath game, or grouse; he shall on conviction before one justice, on oath of one witness, forfeit for every offence *5 l.* half to the informer, and half to the poor, by distress and sale: for want of distress, to be sent to the house of correction for 3 months for the first offence, and for every other offence 4 months. *9 An. c. 25. s. 1.*

Who shall not be otherwise qualified] From these words it seemeth clear, that a gamekeeper who is qualified in his own right to kill game, need not to be entred with the clerk of the peace.

4. And

4. And moreover, by the 3 G. c. 11. it is further enacted, <sup>To be also a me-
nial servant.</sup> that no lord of a manor shall make any person to be a gamekeeper with power to kill game, unless such person be qualified by the laws of this realm so to do; or unless such person be truly and properly a servant to the said lord; or be immediately employed and appointed to take and kill the game for the sole use of the said lord, and not otherwise:

And if any person, not being qualified by the laws so to do, or not being truly and properly a servant of any lord of a manor, or not immediately employed and appointed to take and kill the game for the sole use or immediate benefit of the said lord, shall under colour or pretence of any power or authority, deputation, or qualification to him granted by any lord of a manor, take or kill any hare, pheasant, partridge, or other game whatsoever; or shall keep or use any greyhounds, setting dogs, hays, lurchers, guns, tunnels, or any other engine, to kill and destroy the game; he shall forfeit 5 *l.* in like manner. S. 1.

5. The gamekeeper (so authorized) may search for dogs and Gamekeeper's engines, and seize the same for the use of the lord, or destroy power to search. them. 22 & 23 C. 2. c. 25. s. 2.

But it hath been adjudged, that an authority from the lord of the manor is not of it self sufficient for this purpose, but that he ought to have a warrant from a justice of the peace. *Comb.* 183. *Carpenter and Adams.* At least it may be safe to have such warrant, especially if any houses are to be entred and searched.

For it would give too great a power to the gamekeepers, to leave it in their discretion to search what places they shall think proper, as also to constitute them the judges whether such or such a person is or is not qualified to kill game. Therefore it is best to have a warrant from a justice of the peace, after information and oath of the offence first made.

III. Qualification by estate or degree to kill game; with the punishment of persons unqualified.

The qualification by estate for killing game, in the reign of K. *Richard* the second, was 40*s.* a year; in the reign of K. *James* the first it was advanced to 10*l.* a year, and after that in some instances to 40*l.* a year; and at last in the reign of K. *Charles* the second it was raised to 100*l.* a year. Not that the laws have become gradually more severe; but as the value of money decreased, the qualification was raised in proportion, the estate continuing nearly the same; for an estate of 40*s.* a year in the reign of K. *Richard* the second was not much inferior to an estate of 100*l.* a year in the reign of K. *Charles* the second. And the penalty for destroying the game was even more severe then than it is now; as I shall shew. For as those ancient laws relating to the game are still in force, and are generally enacted so to be by the subsequent statutes, it will be necessary in order to have a thorough knowledge of this matter to insert them in their order; because the pe-

nalties on each being different, the prosecutor or justices may chuse which of them they will convict an offender upon. Thus by the statute of the 5 A. hereafter following, if a person not having 100*l.* a year shall keep dogs or engines to destroy the game, he shall forfeit 5*l.* but if such person have not 40*s.* a year, he may upon the statute of R. 2. be punished by a year's imprisonment; and so of the rest: provided that no person be prosecuted upon more than one act for one offence.

40*s.* a year.

1. The first qualification relating to the game, was in the 13th year of the reign of R. 2. by which it is enacted, that no layman which hath not lands or tenements of 40*s.* a year, nor clergyman if he be not advanced to 10*l.* a year, shall have or keep any greyhound, hound, nor other dog to hunt; nor shall use fyrets, heys, nets, harepipes, nor cords, nor other engines for to take or destroy deer, hares, nor conies, nor other gentlemens game: on pain of a year's imprisonment. And the justices of the peace (that is, in their sessions) shall enquire of the offenders in this behalf, and punish them by the pain aforesaid. 13 R. 2. *β. 1. c. 13.*

10*l.* a year.]

2. The next qualification by estate or degree to kill game, was by a statute in the 1 *ŷ.* whereby it is enacted, that every person who shall keep any greyhound for coursing of deer or hare, or setting dog or net to take pheasants or partridges (except he be seised, in his own right or the right of his wife, of 10*l.* a year estate of inheritance, or 30*l.* a year of a lives estate, or goods to the value of 200*l.* or be the son of a knight or lord, or the son and heir apparent of an esquire) and be thereof convicted, by confession, or oath of two witnesses, before two justices, he shall be committed to gaol 3 months, unless upon conviction he pay 20*s.* to the churchwardens for the use of the poor, or after one month after his commitment he become bound by recognizance with two sureties before two justices, in 20*l.* a piece, not to offend again in like manner. 1 *ŷ. c. 27. f. 3.*

40*l.* a year.

3. The next qualification relates to deer and conies only, in the 3 *ŷ. c. 13.* by which it is enacted, that if any person not having hereditaments of 40*l.* a year, or not worth in goods 200*l.* shall use any gun or bow to kill any deer or conies; or shall keep any buckstall, nets, or coney dogs (except he have grounds inclosed, and used for the keeping of deer or conies, the increasing of which said conies shall amount to the value of 40*s.* a year; or keepers or warreners in their parks, warrens, or grounds); in such case, any person having lands or hereditaments of 100*l.* a year in fee, or for life, in his own right or the right of his wife, may take from such person to his own use for ever such guns, bows, buckstalls, nets, and coney dogs. 3 *ŷ. c. 13. f. 5.*

40*l.* a year.

4. The next qualification relates to pheasants and partridges only, and is as follows: Every free warrener, lord of a manor, or freeholder seised in his own or his wife's right, of 40*l.* a year of inheritance, or lives estate of 80*l.* or worth in goods 400*l.* may take pheasants and partridges (in the day time only) in his own

own free warren, manor, or freehold, betwixt Michaelmas and Christmas yearly. 7 J. c. 11. s. 7.

5. The last general qualification by estate or degree to kill 100l. a year. game, and which is now most to be regarded, is in the 22 & 23 C. 2. c. 25. by which it is enacted, that every person, not having lands and tenements, or some other estate of inheritance, in his own or his wife's right, of the clear yearly value of 100l. per annum, or for term of life, or having lease or leases of 99 years, or for any longer term, of the clear yearly value of 150l. (other than the son and heir apparent of an esquire, or other person of higher degree, and the owners and keepers of forests, parks, chases, or warrens) is hereby declared to be a person by the laws of this realm, not allowed to have or keep for himself or any other person, any guns, bows, greyhounds, setting dogs, ferrets, coney dogs, lurchers, hays, nets, lowbels, harepipes, gins, snares, or other engines for the taking and killing of game. S. 3.

6. And the gamekeeper, or any other person (authorized by warrant (B) of a justice of the peace) may in the day time search the houses, outhouses, or other places of any such person prohibited by this act to keep or use the same, as upon good ground shall be suspected to have or keep in his custody any guns, bows, greyhounds, setting dogs, ferrets, coney dogs, or other dogs to destroy hares or conies, hays, tramels, or other nets, lowbels, harepipes, snares, or other engines aforesaid, and the same to seize, and keep, for the use of the lord of the manor, or otherwise to cut in pieces or destroy. 22 & 23 C. 2. c. 25. s. 2. Searching for dogs and engines.

7. And if any unqualified person shall have, keep, or use any bows, greyhounds, setting dogs, ferrets, coney dogs, hayes, lurchers, nets, tunnels, lowbels, harepipes, snares, or any other instruments for destruction of fish, fowl, or other game; and shall not give a good account before a justice, to the satisfaction of such justice how he came by the same, or else shall not in some convenient time (to be set by such justice) produce the party of whom he bought the same, or some other credible person to depose upon oath such sale thereof; he shall forfeit for every offence not under 5s. nor above 20s. half to the informer, and half to the poor by distress; for want of distress, to be committed to the house of correction, not more than one month, nor less than ten days, there to be whipt and kept to hard labour. And if any person so produced or charged with the said offence, shall not before the justice give such evidence of his innocence as aforesaid, he shall be convicted thereof in the same manner as the person first charged therewith, and so from person to person till the first offender be discovered. 4 & 5 W. c. 23. s. 3. 20s. penalty for keeping dogs and engines.

And all lords of manors and their gamekeepers may within their manors oppose and resist such offender, in the night time, in the same manner as if the fact had been committed in any ancient chase, park, or warren inclosed. S. 4.

And no certiorari shall be allowed to remove any conviction, unless the party first become bound to the prosecutor in 50l. with such sufficient sureties as the justice shall think fit, to pay within a month after the conviction confirmed, or procedendo granted, full costs

costs and charges ; and in default thereof, the justice shall proceed to the execution of the conviction. S. 7.

21. penalty for keeping dogs and engines ; and the same to be seized.

8. But by a subsequent statute 5 An. c. 14. *If any person, not qualified by the laws of this realm so to do, shall keep or use any greyhounds, setting dogs, hayes, lurchers, tunnels, or any other engine to kill and destroy the game, and shall be thereof convicted (C. D.) on the oath of one credible witness, before one justice, he shall forfeit 5 l. half to the informer, and half to the poor, by distress (E) ; for want of distress, to be sent to house of correction (F) for three months for the first offence, and for every other offence four months :*

And any justice, and lord within his manor, may take away such dogs, nets, or other engines, which shall be in the power or custody of any person not qualified. S. 4.

Not qualified by the laws of this realm] On a conviction on this statute, exception was taken, that the defendant not being a person so and so qualified, and enumerating distinctly the several qualifications in 22 & 23 C. 2. omitted a new qualification allowed by this act, namely, that he was not a person authorized by a lord (or lady) of a manor to kill game for his use. And by the court; Had it been generally laid thus, that he not being a person qualified according to law, and so on, it had been enough ; but the qualifications being distinctly and severally mentioned, the omission of one is fatal. 10 Mod. 26. T. 10 An. 2. and Matthews.

Shall keep or use] In the case of *King v. King*, E. 2 G. Parker Ch. J. said, that walking about with intent to kill game, is evidence of *using* the instrument for that purpose. Sess. C. V. I. 88.

Any other engine] T. 11 & 12 G. 2. K. and Gardiner. It was moved to quash a conviction, for unlawfully having and keeping a gun, being an engine or instrument for destroying the game. And it was urged, that this is no sufficient charge within this act, or any other of the laws relating to the game : For it is not said, that the defendant *used* the gun for the destruction of game ; and a gun is not an instrument so far appropriated to killing game, as that it is criminal for a person to have one in his custody only : And it would have been altogether as well, if it had been said, that the defendant had in his custody a cane for the destruction of the game, which may possibly be used for that purpose. The only offences intended to be prevented by the act are, the keeping of engines appropriated to, and which can only be used in, the destroying of game. A gun is an engine, not for killing the game, but for the defence of a man's house. And the whole court were clearly of opinion, that this conviction is not good. For (as they argued) if the statute is to be construed so largely, as to extend to the bare having of any instrument, that may possibly be used in destroying game, it will be attended with very great inconvenience ; there being scarce any, tho' ever so useful, but what may be applied to that purpose. And tho' a gun may be used in destroying game, and when it is so, doth then fall within the words of the act ; yet as it is an instrument proper, and frequently necessary to be kept and used for other purposes, as the killing

killing of noxious vermin, and the like, it is not the having a gun, without applying it in the destruction of game, that is prohibited by the act: but otherwise it is of lurchers, harepipes, and such like, which are peculiarly fitted or disposed for killing game. The bare keeping of these for the purpose of killing game, is sufficient to convict an offender, and it will be incumbent upon the defendant himself to prove, that he kept them for other purposes. And the conviction therefore was quashed. After which, *Strange Solicitor General* said, that in the case of *K. and King, E. 3 G. Lord Macclesfield* said, that he was in the House of Commons when this act was made, and he himself objected to the inserting of the word [gun] therein, because it might be attended with great inconvenience. *Andr. 255. Sess. C. V. II. 204.*

And indeed it was not at all necessary to insert a gun in this act, since the carrying of a gun is prohibited under double the penalty by the statute of *H. 8.* hereafter following.

On the oath of one credible witness] On a conviction for keeping a greyhound, the objection was, that the conviction was upon the single testimony of the informer. And by the court, it is a fatal objection; for should the informer be allowed to be a sufficient evidence, it would induce profligate persons to commit perjury for the sake of the reward. *L. Raym. 1545.* The same adjudged in the case of *K. and Blaney, T. 11 & 12 G. 2. Andr. 240.*

Shall forfeit 5 l.] On a conviction, exception was taken, that the person was charged with so many 5 l. as he had killed hares in the same day. And the court was of opinion, that the offence for which the statute gave the forfeiture, was the keeping dogs and engines, and not killing the hares. If a man not qualified goes a hunting, and kills never so many hares on the same day, he would forfeit but one 5 l. for it is but one offence; but if a man keeps dogs, and goes a hunting several days, and kills hares, if it was thus laid, that he such a day kept dogs and killed, and then again such a day, by laying thus severally, the offence is severed, and he shall forfeit 5 l. for each offence. *T. 10 An. 2. and Matthews, 10 Mod. 26.*

And [no] certiorari shall be allowed to remove the conviction or other proceedings on this act, unless the party convicted shall before the allowance thereof become bound (G) to the prosecutor in 50 l. with such sureties as the justice shall think fit, to pay full costs and charges in 14 days after the conviction [confirmed], or procedendo granted. And in default thereof, the justice shall proceed in execution of the conviction in such manner as if no certiorari had been awarded. 5 An. c. 14. s. 2.

Note; The word [no] is inserted instead of the words [if any] which are in the act, since that word seemeth necessary to make up the sense; and the word [confirmed] is added for the like reason. And indeed there have been too many inadvertencies either in the penning or printing of this act; for there is false grammar in no fewer than six places, besides other mistakes.

9. *And the constable, authorized by a justice's warrant, shall enter into and search (in such manner and with such power as in case* Search for game; with 20s. penalty for having it.

where goods are stolen, or suspected to be stolen) the houses, outhouses, or other places belonging to such houses of suspected persons not qualified: And if any hare, partridge, pheasant, pigeon, fish, fowl, or other game, shall (upon such search, or otherwise) be found, the offender shall be carried before a justice; and if such person do not give a good account how he came by the same, such as shall satisfy the said justice, or else shall not in some convenient time, to be set by the justice, produce the party of whom he bought the same, or some other credible person to depose upon oath such sale thereof, he shall be convicted by the said justice of such offence, and upon such conviction shall forfeit for every hare, partridge, pheasant, fish, fowl, or other game, any sum not under 5 s. and not exceeding 20 s. half to the informer, and half to the poor, by distress; for want of distress, to be committed to the house of correction not more than one month, nor less than ten days, there to be whipt and kept to hard labour. 4 & 5 W. c. 23. f. 3.

Or other game] Rabbits killed in a private warren, are not game within this act. L. Raym. 151.

For every hare, fish, fowl, or other game] These words are very penal.

And if any person so produced, or charged with the said offence, shall not before the justice give such evidence of his innocence as aforesaid, he shall be convicted thereof in the same manner as the person first charged therewith, and so from person to person till the first offender be discovered. Id. f. 3.

And no certiorari shall be allowed to remove any conviction, unless the party first become bound to the prosecutor in 50 l. with such sufficient sureties as the justice shall think fit, to pay within a month after the conviction confirmed or procedendo granted, full costs and charges; and in default thereof, the justice to proceed to the execution of the conviction. Id. f. 7.

Carriers having game.

10. If any higler, chapman, carrier, innkeeper, victualler, or alehousekeeper, shall have in his custody or possession, or shall buy, sell, or offer to sell any hare, pheasant, partridge, moor, heath-game, or grouse (unless it be sent by some person qualified); he shall be carried before a justice where the offence is committed (H); and being convicted (I) thereof (in three months after the offence) on view, or oath of one witness, he shall forfeit for every hare, pheasant, partridge, moor, heath-game, or grouse, the sum of 5 l. half to the informer, and half to the poor, by distress and sale (K): for want of distress, to be committed (L) to the house of correction for the first offence 3 months, and for every other offence 4 months. 5 An. c. 14. f. 2.

Convicted—on view, or oath of one witness] Confession, tho' not mentioned in the statute, being stronger evidence than the oath of one witness, was adjudged to be good. H. 9 G. K. and Gage. Dalt. 109, 162.

And no certiorari shall be allowed to remove the conviction or other proceedings, unless the party convicted shall before the allowance thereof, become bound to the prosecutor in 50 l. with such sureties as the justice shall think fit, to pay full costs in 14 days after

after the conviction confirmed, or procedendo granted. And in default thereof, the justice shall proceed in execution of the conviction, in such manner as if no certiorari had been awarded. 5 An. c. 14. f. 2.

And if any hare, pheasant, partridge, moor, heath-game, or grouse, shall be found in the shop, house, or possession of any person not qualified in his own right to kill game, or intitled thereto under some person so qualified, it shall be deemed an exposing thereof to sale. 9 An. c. 25. f. 2.

Found in the shop] This must be understood of proof that it was found. 2. and George, 6 Mod. 57.

And any justice of the peace, and lord within his manor, may take away any such hare, pheasant, partridge, moor, heath-game, or grouse, or any other game, from any such higler, chapman, innkeeper, victualler, or carrier, or any other person not qualified, which shall be found in his custody or possession. 5 An. c. 14. f. 4.

And any person that shall destroy, sell, or buy any hare, pheasant, moor, heath-game, or grouse, and shall in 3 months make discovery of any higler, chapman, carrier, innkeeper, alehousekeeper, or victualler, that hath bought or sold, or offered to buy or sell, or had in their possession any hare, pheasant, partridge, moor, heath-game, or grouse, so as any one shall be convicted; such discoverer shall be discharged of the pains and penalties hereby enacted for killing or selling such game, and shall receive the same benefit as any other informer. 5 An. c. 14. f. 3.

11. And whereas great mischiefs do ensue by inferior tradesmen, apprentices and other dissolute persons, neglecting their trades and employments, who follow hunting, fishing, and other game, to the ruin of themselves, and damage of their neighbours, therefore if any such person shall presume to hunt, hawk, fish, or fowl (unless in company with the master of such apprentice duly qualified); he shall not only be subject to the other penalties, but if he be prosecuted for trespass, in coming on any person's land, and be found guilty, the plaintiff shall not only recover damages against him, but full costs. 4 & 5 W. c. 23. f. 10.

Inferior tradesmen killing game.

12. By the yearly mutiny acts, if any officer or soldier shall, without leave of the lord of the manor under his hand and seal, destroy any hare, coney, pheasant, partridge, pigeon, or other fowl, poultry, or fish, or his majesty's game, and be convicted thereof, on oath of one witness, before one justice; every officer so offending shall forfeit 5 l. to the poor, and the commanding officer upon the place, for every offence committed by any soldier under his command, shall forfeit 20 s. in like manner. And if, upon conviction by the justices, and demand thereof made by the constable or overseers of the poor, he shall not in two days pay the said penalties, he shall forfeit his commission.

Soldiers.

13. Here next followeth the statute of the 33 H. 8. c. 6. concerning guns: by which it is enacted as follows;

The statute of 33 H. 8. concerning guns.

(1) No person, except he in his own right, or in the right of his wife, or some other to his use, have lands, tenements, fees, annuities, or offices, to the yearly value of 100 l. shall shoot in any cross bow, hand gun, hagbut, or demihake, otherwise than

as hereafter is expressed; on pain of 10 *l.* to be levied and disposed of in any of the three ways hereafter mentioned.

(2) And no person, of what estate or degree soever, shall shoot in, carry, keep, use, or have in his house or elsewhere, any hand-gun, not being in the stock and gun of the length of one yard; or any hagbut or demihake, not being in the stock and gun of the length of three quarters of a yard; on the like pain of 10 *l.*

And every person having 100 *l.* a year as above, may seize every such cross bow; and every such hand gun, hagbut, and demihake being so deficient in length; and he may keep the cross bow to his own use; but he shall in 20 days after seizure break and destroy the hand-guns, hagbuts, and demihakes, on pain of 40 *s.* in like manner, for every gun so seized, and not broken and destroyed; and the same so broken and destroyed he may keep to his own use.

(4) And no person, not being qualified as above, shall carry or have in his journey, going or riding in the king's highways or elsewhere, any cross bow bent, or gun charged or furnished with powder, fire, or touch for the same, except in time and service of war; on pain of 10 *l.* in like manner.

(5) And no person shall shoot with any hand-gun, demihake, or hagbut, at any thing at large, within any city, borough, or market town, nor within a quarter of a mile of the same, except it be at a butt or bank of earth in place convenient, or for defence of his person or house; on pain of 10 *l.* in like manner.

(6) And no person shall command his servant to shoot in any cross bow, hand-gun, hagbut, or demihake, at any deer, fowl, or other thing, except only at a butt or bank of earth, or in time of war; on pain of 10 *l.* in like manner.

(7) But all gentlemen, yeomen, and servingmen of lords, knights, esquires, and gentlemen; and all inhabitants of cities, boroughs, and market towns, may shoot with any hand-gun, demihake, or hagbut, of the length as above, but not under, at any butt or bank of earth, in place convenient.

And every such lord, knight, esquire, gentleman, and inhabitant of cities, boroughs, and market towns, may have and keep in their houses any such hand-gun, hagbut, or demihake, of the length aforesaid, to the intent only to use or shoot in the same at a butt or bank of earth.

And every person inhabiting in a house two furlongs from any city, borough, or town, may keep and have in his house, for the only defence of the same, hand guns, hagbuts, and demihakes, of the length abovementioned; and to use and exercise to shoot in the same at any butt or bank of earth near to his house, and not otherwise.

And except makers and sellers of the same, having them for that purpose only, and being of the length above.

Also this act shall not extend to persons inhabiting within 5 miles of the sea; so that they shoot not at any deer, heron, shovellard, pheasant, partridge, wild swine, or wild elk.

Also this act shall not extend to servants carrying the same by their masters command, so that they shoot not at any game.

Nor to any owner of a ship for having or keeping them, of what length soever, to be used in the ship only.

(Nor to persons licensed by the sessions to shoot hawks meat, so as they shoot no game, and so that they shoot not within 600 paces of a hernery, nor within 100 paces of a pigeon house, nor in another man's park, forest, or chase. 1 J. c. 27. s. 7.

And except the sheriff, who may carry a gun in the execution of his office. 5 Co. 72.)

(8) And if any person see or find any one offending or doing contrary to this act, he may arrest, and bring or convey him to the next justice of the county where he is found offending; who shall upon *due examination and proof* thereof made before him, by his discretion have full power to commit (M) the offender to the next gaol, there to remain till such time as the said penalty or forfeiture shall be truly contented and paid by the said offender; half to the king, and half to the first bringer or conveyer of the said offender to the justice.

Which *due examination and proof* aforesaid, is intended not to be by a jury, but by witnesses. 1 Ventr. 33.

Mr. Dalton says, forasmuch as in this case the justice hath the whole matter committed to himself, and the offenders remain convicted upon his examination and proof of witness made before him; therefore he ought to be circumspect in his examination, as also in his mittimus; and farther to make a record (N) of the matter, in writing under his hand, and also to send the estreat of it into the exchequer, whereby the king's duty may be levied. *Dalt. c. 47.*

In the conviction, it is not sufficient to say generally that he had not 100 l. a year, but the time must be certainly alledged, namely, that the defendant on the day and year aforesaid (when the offence was committed) had not 100 l. a year. 3 Mod. 280.

And upon such conviction, it hath been adjudged, that a writ of error doth not lie. 1 Ven. 33.

(9) Also the justices in sessions may inquire of, hear and determine the said offences, so that no less fine than 10 l. be assessed upon *presentment* and conviction, to be levied in such case to the king's use only.

And this may also be upon *indictment*. *Dalt. c. 47.*

And if the jury shall wilfully conceal any the said offences, the court may charge another jury to enquire of such concealment; and if it be so found, the first jury shall forfeit to the king every one 20 s.

(10) Also the leet may inquire of, hear and determine the same; in which case, half the forfeiture shall upon presentment and conviction be levied to the king's use; and one moiety of the other half to the owner of the leet, by distress or action of debt; and the other moiety to him that will sue in any of the king's courts.

And if the jury shall wilfully conceal an offence, the steward may charge another jury to enquire of the concealment; and if it

be found, the first jury shall forfeit 20 s. each; half to the owner of the leet, by distress or action of debt; and half to him that shall sue in any of the king's courts.

(11) But no person shall be prosecuted but within a year, if it is by the king; and within half a year, if by any other person.

IV. Laws for preserving the four footed game in particular.

Which said laws; as hath been said, do seem to concern all persons whatsoever, whether qualified or not.

Now the four footed game, or the game of beasts, are of three kinds, viz.

i. Deer.

ii. Hares.

iii. Conies.

i. Of deer.

There have been many laws from time to time enacted against deer stealers; which being not so much altered, as enforced by the subsequent statutes, except only in increasing the penalties, it may be proper to insert them all in their order; and the rather, because an offender, as it seemeth, may still be convicted upon any one of them; and it is generally provided, that such conviction upon one statute, shall be as a bar to all the rest.

3 years imprisonment and fine.

1. The first statute is in the 3 Ed. 1. c. 20. which enacts, that if *trespassers in parks* be thereof attainted at the suit of the party, great and large amends shall be awarded according to the trespass, and they shall have 3 years imprisonment, and after shall make fine at the king's pleasure (if they have whereof,) and then shall find good surety that after they shall not commit the like trespass: and if they have not whereof to make fine, after three years imprisonment, they shall find like surety; and if they cannot find like surety, they shall abjure the realm. And if none sue within the year and day, the king shall have the suit.

Trespassers] This is, when a man either chaseth in a park, or endeavours to kill some of the game thereof. 2 Inst. 199.

In parks] This act, because it is very penal, is to be understood, not of a nominal park erected without warrant, but of a lawful park only, whereunto three things are required, 1. A liberty, either by grant or prescription. 2. Inclosure, by pale, wall or hedge. And 3. Beasts savages of the park. 2 Inst. 199.

They may be lawfully resisted.

2. The next statute is that intitled *De malefactoribus in parcis*, 21 Ed. 1. st. 2. which enacts, that if any forester, or parker, shall find any trespassers wandering within his liberty, intending to do damage therein, and that will not yield themselves after hue and cry made to stand unto the peace, but do continue their malice, and disobeying the king's peace do flee, or defend themselves with force and arms; altho' such forester, parker, or their assistants,

siftants, do kill such offenders, they shall not be troubled upon the same.

3. The next statute makes hunting by night, or in disguise, and concealing the same, felony; but within the benefit of clergy; as follows;

By night, or disguised, and concealing the same; felony.

When information shall be made, of any unlawful hunting, in any forest or park, by night, or with painted faces, to any of the king's counsel, or to a justice of the peace, of any person to be suspected thereof, he may make a warrant to take and arrest the person, and to have him before the maker of the warrant, or any other of the said counsel, or justices of the peace: who may by their discretion examine him of the said hunting, and of the said doers in that behalf: And if the same person wilfully conceal the said huntings, or any person with him defective therein, that then the same concealment be, against every such person so concealing, felony. But if he then confesses the truth, and all that he shall be examined of, and knoweth in that behalf, then the said offences of hunting by him done, shall be but trespasss finable at the next general sessions. And if any rescous or disobedience be made to any person having authority to execute the warrant, by any person the which so should be arrested, so that the execution of the warrant thereby be not had, then the said rescous and disobedience shall be felony. And if any person shall be convicted of any such huntings, with painted faces, vizors, or otherwise disguised, to the intent they should not be known, or of unlawful hunting in time of night, then the same person so convicted, to have like punishment as he should have if he were convicted of felony. 1 H. 7. c. 7.

When information shall be made] This information must shew at least just cause of suspicion; and it must be taken in writing, because it is the ground of the warrant. 3 Inst. c. 21.

In any forest or park] This doth not extend to a chase, nor to any forest or park in use or reputation, which are not so in law. 3 Inst. c. 21.

Wilfully conceal] Lord Coke, who is a lover of the common law, and is jealous of every violation of it, seemeth to be out of humour with this act, and calls it an ill penned law. He observes it is the first that was made for the making of any hunting felony, against that excellent and equal branch of *charta de foresta*, *nullus de cætero vitam vel membra amittat pro venatione nostra*; and that this, and other old statutes concerning the forest, are called the good old laws and customs, and commanded to be observed; and therefore this new act is too severe for wild beasts, whereof there can be no felony at the common law. And therefore the judges (he says) have made a favourable construction of it, as is set forth in the following notable report:

M. 19 & 20 El. In the king's bench. Gerrard the queen's attorney general (who was a grave and reverend man) said openly, that it had been resolved by the judges upon this statute, that if a man in the night, or by day with painted face, do hunt as above, and being examined according to the act doth conceal it, yet this is

upon the construction of the whole act no felony. For the first clause concerning the concealment, and the last clause concerning the fact it self, must be coupled or joined by construction together; that is to say, If any person be convicted of such hunting with painted face, or of unlawful hunting in the night, this conviction must be upon Not guilty pleaded; which the judges expounded to be the concealment intended in the first branch; for they held that it ought to be a judicial concealment, and not an extrajudicial concealment before one of the counsel or a justice of the peace, which may lie in averment, so as before it be felony he must be convicted of such hunting upon Not guilty pleaded first, and after such conviction, then he must be indicted again upon the whole matter, that he feloniously did conceal it, against the form of the statute: And if the offender upon the first indictment confesseth the indictment, then it is such a judicial confession as this act intendeth, and no felony within this statute.

This he says, he heard the attorney report, and did then observe it; which concurring with his own opinion, he thought good to publish, and the rather because in *Lambard's* justice, amongst his precedents of indictments, there is an erroneous precedent (he says) of an indictment of felony for the concealment upon the examination before a justice of the peace. And upon the whole he thinks it the clearest way to make it trespass, and not felony; which the party may do at his pleasure. 3 *Inst.* c. 21.

But Lord *Hale* says, that this seems a difficult exposition; for upon his arraignment for the hunting, he only answers to that indictment, and is not examined touching others; and besides, if he be indicted for the hunting, if there be evidence to convict him of the fact, he is convicted of felony before the indictment for concealment come; and if there be not evidence to convict him of the principal, how shall there be evidence to convict him of the concealment? 1 *H. H.* 659.

But the statute of 9 *G. c.* 22. hereafter following, commonly called the Black act, puts this matter out of question, whilst it continues in force, and renders this statute of little use: but nevertheless it was proper to insert it here, because if that statute shall be suffered to expire, the offence will fall back again upon this statute.

Penalty of keeping nets for deer.

4. The next statute is in the 19th year of the same king, by which it is enacted, That no person, not having any park, chase or forest of his own, shall keep or cause to be kept any net, called deer-hays or buck-stalls, on pain of 10 *l.* a month; to him who shall sue by action of debt: Or, the justices in sessions may call before them any persons suspected, and examine them; and if they be found in default, may commit them till they have found surety for payment of the forfeiture to the king; and the justices shall have the tenth part of such forfeiture for their labour. 19 *H. 7. c.* 11.

Penalty of stalking to deer,

5. And by the same statute, no person shall stalk, nor cause any other to stalk, with any bush, or beasts, to any deer, except in

in his own ground, chase, forest, or park, without licence of the owner, master, or keeper; on pain of 10*l.* in like manner.

6. The next act is in 5 *El. c. 21.* which is re-enacted with some additions by the 3 *J. c. 13.* which is altered and explained by the 7 *J. c. 13.* the substance of all which put together is as follows:

If any person shall by night or by day, wrongfully or unlawfully break or enter into any park impaled, or any other several grounds inclosed with wall, pale, or hedge, and used and kept for the keeping, breeding, and cherishing of deer, and wrongfully or unlawfully shall hunt, drive, or chase out, or take, kill, or slay any deer therein; and be thereof convicted at the assizes or sessions, upon indictment, bill of complaint, information, or otherwise, at the suit of the king or of the party, he shall for every offence pay 10*l.* to the party grieved, or treble damages and costs at the election of the party, to be assessed by the court; and shall find sufficient sureties for his good abearing for 7 years, or continue in prison till he finds such sureties.

But on satisfaction of treble damages, the party may release the sureties within the 7 years. Or if the person shall acknowledge his offence in open sessions, and that he is sorry therefore, and satisfy the party grieved, the court may discharge the recognizance.

But this shall not extend to any park or inclosed ground, hereafter to be made and used for deer, without the king's licence.

7. And by the said statute of the 3 *J. c. 13.* it is also enacted, that if any person not having lands or hereditaments of 40*l.* a year, or not worth in goods 200*l.* shall use any gun or bow to kill deer; or shall keep any buckstall or engine, unless he have grounds inclosed for keeping of deer; any person having 100*l.* a year may seize the same to his own use.

Guns, bows, and nets to kill deer, may be seized.

8. Another statute is 1 *J. c. 27.* which enacts, that every person who shall sell, or buy to sell again any deer, shall, on conviction at the assizes, or sessions, or before two justices out of sessions, forfeit for every deer 40*s.* half to him that will sue, and half to the poor.

Selling deer.

9. The next act is in 13 *C. 2. c. 10.* by which it is enacted, that if any person shall unlawfully course, kill, hurt, or take away any red or fallow deer, in any forest, chase, purlieu, paddock, wood, park, or other ground where deer are or have been usually kept, without consent of the owner, or person chiefly intrusted with the custody thereof; or shall be aiding or assisting therein; and shall be convicted thereof by confession, or oath of one witness, before one justice, in 6 months after the offence committed; he shall forfeit for every offence 20*l.* half to the informer, and half to the owner of the deer, by distress; for want of sufficient distress, to be committed to the house of correction for 6 months to hard labour, or to the common gaol for one year; and not to be discharged thence, till he hath given sureties for his good behaviour for a year next after his enlargement.

20*l.*

Note; This act doth not appear to be limited to grounds inclosed only; altho' the statute of the 10 G. 2. c. 32. hereafter following seems to suppose it so.

301.

10. The next act is the 3 W. c. 10. on which most of the convictions have been since that time; which (together with the alterations and additions made in and to the same by the 5 G. c. 15. 9 G. c. 22. and 10 G. 2. c. 32.) is as followeth:

If any person shall unlawfully course, hunt, take in toyls, kill, wound, or take away, any red or fallow deer, in any forest, chase, purlieu, paddock, wood, park, or other ground inclosed, where deer are, have, or shall be usually kept, without the consent of the owner or person chiefly intrusted with the custody thereof; or shall be aiding or assisting therein; and shall be convicted (O) thereof, in 12 months after the offence, by confession, or oath of one witness, before one justice where the offence shall be committed, or the party apprehended: every such person so offending by unlawful coursing or hunting only, when no deer is taken, wounded, or killed, shall forfeit for every such offence 20 l. and in case any deer shall by such person be wounded, taken in toyls, or killed, he shall forfeit for every such deer 30 l. to be levied by distress (P) upon the goods and chattels of the offender by warrant of such justice; one third to the informer, one third to the poor, and one third to the owner of the deer: for want of sufficient distress, such person shall be imprisoned (Q) for a year, and set in the pillory an hour on some market day in the next adjoining town to the place where the offence was committed, by the chief officer of such market town, or his under officer. S. 2.

Unlawfully] Where a man kills deer in pursuance of a supposed right which he has, he is not within the intent of this, nor of the other acts against deer stealing. L. Raym. 584.

Or other ground inclosed] A conviction for killing deer was quashed, for not saying it was in a place inclosed. T. 1 An. 2. and Moore, L. Ray. 791.

Aiding or assisting therein] On a conviction, the question was, whether he who lent dogs to another to hunt, was aiding and assisting therein, to wit, in the hunting: And by the opinion of three judges he was; but Holt Ch. J. was of a contrary opinion, for this being a penal law, shall be construed strictly; and if so, then he who lent the dogs could not be assisting in the act of hunting, and so not within the words of the statute, *aiding and assisting therein*, tho' he might be assisting thereunto. 2 Salk. 542, 543.

And shall be convicted thereof] There ought to be a summons in this, and in all other like cases, to warrant a conviction; and that ought to give a reasonable time to appear in: but if the defendant hath appeared, it cures the want of a summons. 1 Salk. 181, 383.

Convicted] On exceptions taken to a conviction, these points were agreed; 1. That the fact in the conviction need not be laid against the peace; for mere form or formality is not required in these or any other summary proceedings. 2. That between such
a day

a day and such a day he killed 3 deer, is good; for if a day certain were alledged, the informer is not tied up to that; therefore being confined in the former case to give evidence of a killing within these days, it is more certain, and better for the defendant.

3. That an unlawful killing is sufficient, and it need not set forth a hunting, nor how the deer was killed. 4. That, thereupon it is considered that he is convicted, is sufficient, without adding that he hath forfeited; for the statute gives that in consequence, and the judicial part ends at the conviction. 1 Salk. 378.

In 12 months after the offence] A conviction being returned on a *certiorari*, the objection was, that the conviction appeared to be a year after the day of the information; but it was held sufficient that the information be prosecuted within a year after the fact; for that is a good commencement of the suit, and it is from that the computation is made in all such cases. 1 Salk. 383.

But by the black act hereafter mentioned, and during the continuance thereof, this prosecution may be commenced at any time within 3 years after the offence. 9 G. c. 22. s. 13.

Oath of one witness] This must not be upon the single oath of the informer; and a conviction was quashed for that reason; divers convictions, as it is said, having been quashed for the same reason before. L. Raym. 1545.

Every such person so offending] Where several persons are convicted, they shall forfeit each 30 l. and not one sum of 30 l. for all. 1 Salk. 182.

To be lewied by distress] Altho' no sale of goods is here mentioned, yet where the law gives a distress for a publick benefit, the officer may sell. 1 Salk. 379.

By warrant of such justice] Altho' the *constable* is not appointed to execute this warrant, nor is so much as named in the clause; yet he is bound to obey the warrant, and is indictable if he does not: But he need not return the warrant it self, for that is not required, and it may be necessary to keep it for his own justification; but he must either return that, or certify what he has done upon it. 1 Salk. 381.

One third to the informer, &c.] The penalty need not be distributed by the conviction; viz. 10 l. to the informer, 10 l. to the poor, and 10 l. to the party grieved; for the judgment in such cases seldom mentions a distribution: it is enough to say, that he is convicted, and hath forfeited 30 l. according to the statute. 1 Salk. 383.

For want of sufficient distress] If the justice finds there is nothing to distrain, then he must make a record thereof, and make an adjudication for corporal punishment; but the offender is not to pay part, and suffer corporally for the residue. L. Raym. 546, 1195, 6.

And then the act goes on thus:

Any owner of deer in any inclosed ground, or any person acting under him, may resist such offenders in the same manner as

if the fact had been committed in an ancient chase or park. 3 W. c. 10. f. 5.

And as to the case of venison being found in a man's possession, it is further enacted, that the constable, by a justice's warrant, shall enter into and search (R) in such manner and with such power as in case where goods are stolen or suspected to be stolen, the houses, outhouses, or other places belonging to such houses of suspected persons; and if any venison or skin of any deer, or toyls, shall there be found, he shall apprehend the offender, and carry him before a justice; and if such person do not give a good account how he came by the same, such as shall satisfy the said justice, or else shall not in some convenient time to be set by the said justice, produce the party of whom he bought the same, or some other credible witness to depose upon oath such sale thereof, he shall be convicted by the said justice of such offence, and thereupon shall be subject to the forfeitures and penalties hereby inflicted for the killing of one deer. 3 W. c. 10. f. 3.

And by the 9 G. c. 22. commonly called the Black act, any justice may issue his warrant for this purpose; and if any venison or skin of any deer, shall be found in the custody of any person, and it shall appear that such person bought such venison or skin of any one who might be justly suspected to have unlawfully come by the same, and doth not produce the party of whom he bought it, or prove upon oath the name and place of abode of such party, then the person who bought the same shall be convicted of such offence by any justice of the peace, and shall be subject to the penalty above inflicted for killing one deer. 9 G. c. 22. f. 11, 17.

After conviction, the constable or prosecutor may detain in custody the offender, if he shall not presently pay the money due on conviction, during such reasonable time as a return may be conveniently made to the warrant of distress, so as such detainer exceed not two days. 3 W. c. 10. f. 4.

And moreover, the person convicted, before he shall be discharged out of custody, shall become bound to the person against whom the offence shall he committed, in 50*l.* for his future good behaviour, and that he shall not offend in like manner; and upon refusal shall be committed to gaol until the bond be given: And if he shall be afterwards convicted of any offence in the said statute of 3 W. c. 10. the bond shall be forfeited, and the penalty be recovered with costs in any court at *Westminster*, over and above the forfeitures, and to be distributed as the forfeitures. 5 G. c. 15. f. 4.

All this being done, the justice shall certify a true copy of the conviction under his hand and seal, to the next quarter sessions, there to be kept amongst the records. 10 G. 2. c. 33. f. 8.

And no *certiorari* shall be allowed to remove any conviction, or other proceeding thereupon, unless the party, before the allowance thereof, be bound to the prosecutor in 50*l.* with such sureties as the justice shall think fit, to pay in a month after the conviction confirmed, or a *procedendo* granted, full costs and damages; and at the same time become also bound to the justice with sufficient

ficient sureties, in the penalty of 60*l.* with condition to prosecute the *certiorari* with effect, and to pay to the justice the forfeitures due by the conviction, or to render to the justice the person convicted within a month after the conviction shall be confirmed or a *procedendo* granted: and in default thereof, the justice may proceed to the execution of the conviction. 3*W. c.* 10. *f.* 6. 5*G. c.* 15. *f.* 1.

Or, after delivering to the justice the rule by which the conviction shall be confirmed, he may proceed, as if a *procedendo* had been granted. 5*G. c.* 15. *f.* 2.

Moreover, by the said act of 5*G. c.* 15. it is enacted, that if any keeper or other officer of any park, or place where deer are usually kept, shall be convicted on the said statute of the 3*W.* for killing or taking away any red or fallow deer, or being aiding therein, without consent of the owner, or person chiefly intrusted with the custody thereof; he shall forfeit 50*l.* for each deer, to be distributed as the other forfeitures; to be levied by distress: for want of distress, to be imprisoned for 3 years, and be set in the pillory two hours on some market day in the next town to the place where the offence was committed, by the chief officer of such market town, or his under officer. *S.* 5.

And it is further enacted, that if any person shall at any time pull down or destroy, or cause to be pulled down or destroyed, the pale or walls of any park, forest, chase, purlieu, paddock, wood, or other ground inclosed, where any red or fallow deer shall be then kept, without the consent of the owner, or person chiefly intrusted with the custody thereof; and shall be convicted thereof before one justice, by confession, or oath of one witness, he shall suffer the said forfeitures of the 3*W.* for killing one deer. 5*G. c.* 15. *f.* 6.

And any person sued for any thing done either on the 3*W. c.* 10. or on this act, may plead the general issue; and if he recovers, shall have treble costs. 5*G. c.* 15. *f.* 3.

11. Next follows the statute of the 5*G. c.* 28. by which it is enacted, that if any person shall enter into any park, paddock, or other inclosed ground where deer are usually kept, and wilfully wound or kill any red or fallow deer there, without consent of the owner of the ground, or of the person intrusted with the custody thereof, or shall be aiding or assisting therein; and shall be convicted thereof before the judge of assize, upon indictment, by verdict or confession, — he shall be transported for 7 years: Transportation for offences in places inclosed.

But not to be prosecuted likewise on any of the former acts, all which nevertheless shall be of force.

12. Thus stood the laws, till the great insolencies of the *Waltham Blacks* made a further provision necessary, by that famous act of the 9*G. c.* 22. from them usually called the *Black act*, which hath created more new felonies than any other statute whatsoever: which said act being temporary only, hath been continued from time to time, and by the last continuance 24*G. c.* 57. is to be in force to *Sep.* 1. 1757, &c. which, with regard to the subject before us, doth enact as follows: Felony without benefit of clergy.

If any person or persons, being armed with swords, fire arms, or other offensive weapons, and having his or their faces blacked, or being otherwise disguised, shall appear in any forest, chase, park, paddock, or grounds inclosed with any wall, pale, or other fence, wherein any deer have been or shall be usually kept, or shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer; or if any person or persons (whether armed and disguised or not) shall unlawfully and wilfully hunt, wound, kill, destroy, or steal any red or fallow deer, fed or kept in any places in any of the king's forests or chases, which are or shall be inclosed with pales, rails, or other fences; or in any park, paddock, or grounds inclosed, where deer have been or shall be usually kept; or shall forcibly rescue any person being lawfully in custody of any officer or other person, for any the said offences; or shall by gift or promise of money, or other reward, procure any to join him or them in any such unlawful act: every person so offending, being thereof lawfully convicted (in any county in *England*) shall be guilty of felony without benefit of clergy; but not to work corruption of blood, nor forfeiture of lands or goods.

Concerning the manner of bringing the offender to justice, and other particulars relating thereunto, it is proper to refer from hence to the title *Black act*; where these offences, together with the other offences in the said act, are treated of more at large.

Transportation
for a second of-
fence in places
uninclosed.

13. It is to be observed, that this act of the 9 G. c. 22. extends only to killing and wounding deer in places *inclosed* (except the offender be withal armed and disguised); and therefore the said offence in places *uninclosed* remains as it was before the making the said act: But by the statute of 10 G. 2. c. 32. a second offence against the former acts is made transportation: Which, after having recited, that whereas the abovesaid act of the 9 G. c. 22. extends not to hunting or taking deer in open forests or chases, but only in such as are inclosed, and offences in uninclosed places are only punishable by the 3 W. c. 10. which inflicts only a pecuniary punishment, which is not sufficient to deter offenders,—doth therefore enact, That if any person who shall be convicted of unlawfully coursing, hunting, taking in toyls, killing, wounding, or taking any red or fallow deer, in any open or uninclosed forest or chase, where deer are usually kept, shall (during the continuance of the said act of 9 G.) be guilty of a second offence of the like nature, and shall be thereof lawfully convicted on indictment or information; he shall be transported for 7 years; and if he returns within the time, he shall be guilty of felony without benefit of clergy. And the clerk of the peace shall at the request of the prosecutor, or of any person on his majesty's behalf, certify to the assizes a transcript under his hand and seal, briefly and in few words containing the effect and tenor of the first conviction (kept amongst the records); which certificate shall be sufficient proof of the first conviction. 10 G. 2. c. 32. s. 7, 8.

Beating the
keeper, transpor-
tation.

14. Moreover, by the said act of the 10 G. 2. c. 32. If any person armed shall (during the continuance of the said act of 9 G.) come into any forest, chase, or park, wherein deer are usually kept

kept (whether inclosed or not) with an intent to course, hunt, take in toyls, kill, wound, or take away any red or fallow deer, and shall there unlawfully beat or wound any keeper or page of any such forest, chase or park, their servants or assistants in the execution of their office, and be thereof lawfully convicted; he shall be transported for 7 years. 10 G. 2. c. 32. s. 9.

ii. Of hares.

It is to be remembred, that I have already, under the third part of this title, treated of those particulars, which are common to this with other species of the game, as to destroying the same by unqualified persons; I here take notice of such things as belong to hares only, and which for the most part seem generally to concern all persons, whether qualified or not.

1. No person of what estate, degree, or condition he be, shall trace, destroy, and kill any hare in the snow, with any dog, bitch, bow, nor otherwise. And the sessions or leet may enquire hereof; and after inquisition found, they shall for every hare so killed, cess upon every offender 6s. 8d. to be forfeited to the king, if in the sessions; and to the lord of the leet, if in the leet. 14 & 15 H. 8. c. 10. Tracing in the snow.

And by the 1 J. c. 17. Every person who shall trace or course any hares in the snow; shall, on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol for three months, unless he pay to the churchwardens for the use of the poor, 20s. for every hare; or after one month after his commitment become bound by recognizance with two sureties in 20l. a piece, before two justices, not to offend again in like manner. 1 J. c. 27. s. 2.

2. And by the said last mentioned act, every person who shall at any time take or destroy any hares, with harepipes, cords, or any such instruments or other engines; shall forfeit for every hare 20s. in like manner. 1 J. c. 27. s. 2. Snares and harepipes.

And by the 22 & 23 C. 2. c. 25. s. 6. If any person shall be found or apprehended setting or using any snares, harepipes, or other like engines, and shall be thereof convicted, by confession, or oath of one witness, before one justice, in one month after the offence; he shall give to the party injured such damages, and in such time, as the justice shall appoint, and shall pay down presently to the overseers for the use of the poor, such sum not exceeding 10s. as the justice shall appoint; which if he shall not do, the justice shall commit him to the house of correction not exceeding one month.

3. If any person whatsoever shall take or kill any hare in the night-time; he shall on conviction before one justice, on oath of one witness, forfeit 5l. half to the informer, and half to the poor, by distress; for want of distress, to be sent to the house of correction for 3 months for the first offence, and for every other offence 4 months. 9 An. c. 25. s. 3. Killing hares in the night.

4. Every person who shall shoot at, kill, or destroy any hare, with any gun or bow, shall, on conviction before two justices, by confession, Shooting hares.

confession, or oath of two witnesses, be committed to gaol 3 months, unless he pay to the churchwardens for the use of the poor 20s. for every hare; or after one month after his commitment become bound by recognizance with two sureties before two justices, in 20*l.* a piece, not to offend again in like manner. The recognizance to be returned to the next sessions. 17. c. 27. *f.* 2.

Buying and selling hares.

5. Every person, who shall sell, or buy to sell again, any hare, shall, on conviction at the assizes or sessions, or before two justices out of sessions, forfeit for every hare 10s. half to the poor, and half to him that will sue. 17. c. 27. *f.* 4.

Hunting in corn.

6. If any manner of person shall hunt with spaniels in any ground where corn or other grain shall then grow (except in his own ground), at such time as any eared corn or grain shall be growing thereon, and before it be shocked or cocked, and be thereof convicted at the assizes, sessions, or leet; he shall forfeit 40s. to the owner of the corn; and if not paid in ten days, he shall be imprisoned for one month. And any justice may examine the offender, and bind him over to appear at the next sessions, to answer the offence, and to pay the penalty, or receive the punishment. 23 *El.* c. 10. *f.* 5.

Taking hares in warrens.

7. By the Black act before mentioned, if any person, armed and disguised, shall appear in any warren or place where hares are usually kept; or if any person (whether armed and disguised or not) shall rob any such warren, or rescue any person in custody for either of the said offences, or procure any to join with him in any such unlawful act; he shall be guilty of felony without benefit of clergy.

iii. Of conies.

Trespassers in warrens may be resisted.

1. If any warrener shall find any trespassers wandring within his liberty, intending to do damage therein, and that will not yield themselves after hue and cry made to stand unto the peace, but do flee, or defend themselves; altho' the warrener, or his assistant, do kill such offenders, they shall not be troubled upon the same. 21 *Ed.* 1. *β.* 2.

Hunting in a warren by night or disguised.

2. When information shall be made of unlawful hunting in a warren by night, or with painted faces, to any of the king's counsel, or to a justice of the peace, of any person suspected, he may make a warrant to bring such person before himself or any other of the said counsel or justices; and if such person shall conceal the said hunting, or any of his accomplices, it shall be felony; but if he confesseth, it shall be but trespass finable at the sessions. 1 *H.* 7. c. 7.

Hunting in a warren by night.

3. If any person shall in the night time enter into any grounds inclosed, and used for keeping of conies, and hunt, drive out, take, or kill any conies; he shall, on conviction at the suit of the king or of the party, at the assizes or sessions, on indictment, bill, information, or otherwise, forfeit 10*l.* to the party grieved, or treble damages and costs at the election of the party; and find sureties

sureties for his good abearing for seven years, or continue in prison till he does. 3 J. c. 13. f. 2.

But this shall not extend to any grounds to be inclosed and used for conies after the making of this act, without the king's licence. S. 7.

4. No person shall kill or take in the night any conies upon the borders of warrens, or other grounds lawfully used for the breeding or keeping of conies (except the owner or possessor of the ground, or persons employed by them); on pain that the offender, on conviction in one month after the offence, before one justice, by confession, or oath of one witness, shall give to the party injured such damages and in such time as shall be appointed by the justice, and over and above pay down presently to the overseers for the use of the poor such sum not exceeding 10 s. as the justice shall appoint; which if he shall not do, the justice shall commit him to the house of correction for such time as he shall think fit, not exceeding one month. 22 & 23 C. 2. c. 25. f. 5.

Killing in the night, on the borders of warrens.

The statute saith, *upon the borders of warrens*; but if they are out of the warren, no person hath any property in them, and a man may justify killing them if they eat up his corn; but no action lies against the owner of the warren. 5 Co. 104. *Read. Game.*

So a person that hath right of common may kill them, when they are out of the warren and destroy the common; but he cannot have an action on the case against the lord, for that would be to create a multiplicity of actions. *Cro. El.* 548. *Cro. Ja.* 195. *Cro. Car.* 388.

5. If any person shall at any time, enter wrongfully into any warren or ground lawfully used or kept for the breeding or keeping of conies, whether it be inclosed or not; and there shall chase, take, or kill any conies; and shall be thereof convicted in one month after the offence, before one justice, by confession, or oath of one witness; he shall yield to the party grieved treble damages and costs, and be imprisoned three months, and after till he find sureties for his good abearing. 22 & 23 C. 2. c. 25. f. 4.

Killing in places inclosed or uninclosed, by night or day.

6. If any person shall be found or apprehended setting or using any snares or other like engines, and shall be thereof in like manner convicted, he shall give to the party grieved such damages, and in such time as the justice shall appoint, and pay down presently to the overseer for the use of the poor such sum not exceeding 10 s. as the justice shall appoint; which if he shall not do, the justice shall commit him to the house of correction not exceeding one month. 22 & 23 C. 2. c. 25. f. 6.

Setting snares.

7. If any person not having lands or hereditaments of 40 l. a year, or not worth in goods 200 l. shall use any gun or bow to kill conies, or shall keep any ferrets or coney dogs (except he have grounds inclosed for keeping of conies, the increasing of which shall amount to 40 s. a year to be let, and except warreners in their warrens); in such case, any person having 100 l. a year may seize the same to his own use. 3 J. c. 13. f. 5.

Keeping engines.

8. By the Black act before mentioned, if any person, being armed and disguised, shall appear in any warren or place where conies

Felony.

conies are usually kept ; or (whether armed and disguised or not) shall rob any such warren, or rescue any person in custody for such offence, or procure any person to join him therein ; he shall be guilty of felony without benefit of clergy.

V. Laws concerning the winged game in particular.

- i. *Of hawks and hawking.*
- ii. *Of swans.*
- iii. *Of partridges and pheasants.*
- iv. *Of pigeons.*
- v. *Of wild ducks, wild geese, and other water fowl.*
- vi. *Of grouse or moor game.*
- vii. *Of herons.*
- viii. *Of other fowl.*

i. *Of hawks and hawking.*

What hawks a man shall bear.

1. No man shall bear any hawk of the breed of *England*, called a nyesse, goshawk, tassel, laner, laneret, or faulcon; on pain of forfeiting his hawk to the king. And if he bring any of them over sea, or out of *Scotland*, he shall bring a certificate thereof from the officer of the port, or warden of the march; on the like pain of forfeiting the same to the king. And the person that bringeth any such hawk to the king, shall have a reasonable reward of the king, or else the hawk for his labour. 11 *H.* 7. c. 17.

Person finding a hawk.

2. Every person who findeth a faulcon, tercelet, laner, or laneret, or other hawk that is lost, shall presently bring the same to the sheriff; and the sheriff shall make proclamation in all the good towns in the county, that he hath such an hawk in his custody; and if he is challenged in 4 months, the owner shall have him again, paying the costs: if he is not challenged in 4 months, the sheriff shall have him, making gree to him that took him, if he be a simple man; but if he be a gentleman, and of estate to have the hawk, then the sheriff shall redeliver to him the hawk, taking of him reasonable costs for the time that he had him in his custody. 34 *Ed.* 3. c. 22.

Stealing a hawk.

3. And if any man steal any hawk, and the same carry away, not doing the ordinance aforesaid; it shall be done of him as of a thief, that stealeth a horse or other thing. 37 *Ed.* 3. c. 19. That is, he shall be guilty of felony, but shall have his clergy. 3 *Inst.* 98.

Taking hawks or eggs out of the wood.

4. If any person shall take away any hawks or their eggs, by any means unlawfully, out of the woods or ground of any person; and be thereof convicted at the assizes or sessions, on indictment, bill, or information, at the suit of the king or of the party; he

he shall be imprisoned 3 months, and shall pay treble damages; and after the 3 months expired, shall find sureties for his good abearing for 7 years, or remain in prison till he doth. 5 *El. c. 21.*

l. 3.

5. But by a more ancient statute, no man shall take any ayre, *Id.* falcon, goshawk, tassel, laner, or laneret, in their warren, wood, or other place; nor purposely drive them out of their coverts accustomed to breed in, to cause them to go to other coverts to breed; nor slay them for any hurt done by them: on pain of 10*l.* half to him that will sue before the justices of the peace, and half to the king. 11 *H. 7. c. 17.*

And no manner of person, of what condition or degree he be, shall take or cause to be taken, on his own ground or any other man's; the eggs of any falcon, goshawk, or laner, out of the nest; on pain (being convicted thereof before the justices of the peace) of imprisonment for a year and a day, and fine at the king's will; half to the king, and half to the owner of the ground where the eggs were taken. *Id.*

6. If any manner of person shall hawk in another man's corn *Hawking in* after it is eared, and before it is shocked; and be convicted at the *corn.* assizes, sessions, or leet; he shall forfeit 40*s.* to the owner: And if not paid in ten days, he shall be imprisoned for a month. 23 *El. c. 10.*

ii. Of swans.

1. No person (other than the king's son) unless he have lands *Qualification to* of freehold to the value of 5 marks a year, shall have any mark *keep swans.* or game of swans; on pain of forfeiting the swans, half to the king, and half to any person (so qualified) who shall seize the same. 22 *Ed. 4. c. 6.*

2. It is felony to take any swans that be lawfully marked, tho' *Stealing swans* they be at large. *Dalt. c. 156.* *marked.*

3. And as to swans unmarked; if they be domestical or tame, *Swans unmark-* that is, kept in a moat, or in a pond near to a dwelling house, to *ed.* steal such is also felony. *Dalt. c. 156.*

So it seemeth of swans unmarked, so long as they keep within a man's manor, or within his private rivers; or if they happen to escape from thence, and be pursued and taken, and brought in again. *Id.*

But if swans that are unmarked shall be abroad, and shall attain to their natural liberty, then the property of them is lost; and so long, felony cannot be committed by taking them. *Id.*

And yet such unmarked and wild swans the king's officers may seize (being abroad) for the king's use, by his prerogative. Also, the king may grant them, and by consequence another may prescribe to have them, within a certain precinct or place. *Id.*

4. Every person who shall take the eggs of any swans out of *Swans eggs.* the nest, or wilfully spoil them in the nest; and shall be convicted thereof before two justices, by confession, or oath of two witnesses; shall be committed to gaol 3 months, unless he pay to the churchwardens for the use of the poor, 20*s.* for every egg; or *after*

after one month of his commitment, become bound by recognizance with two sureties in 20 *l.* a piece, before two justices, never to offend again in like manner : which recognizance shall be returned to the next sessions. 1 *J. c.* 27. *f.* 2.

But by a more antient statute, no person shall take or cause to be taken, on his own ground or any other man's, the eggs of any swan ; on pain (on conviction before the justices of the peace) of imprisonment for a year and a day, and fine at the king's will, half to the king, and half to the owner of the swans. 11 *H.* 7. *c.* 17.

iii. Of partridges and pheasants.

Partridges and pheasants are birds of warren, and the law seems peculiarly to protect them : as appears by what follows :

Taking them in
another man's
ground.

1. By the 11 *H.* 7. *c.* 17. it is enacted, that no person, of what condition he be, shall take or cause to be taken, any pheasants or partridges by nets, snares, or other engines, out of his own warren, upon the freehold of any other person, without the special licence of the owner or possessor of the same ; on pain of 10 *l.* half to him that shall sue, and half to the owner or possessor of the ground where they shall be taken.

Taking them
with dogs, nets,
or engines ; or
their eggs.

2. Every person who shall shoot at, kill, or destroy, any pheasant or partridge, with any gun or bow ; or shall take, kill, or destroy them with setting dogs and nets, or with any manner of nets, snares, engines, or instruments whatsoever ; or shall take their eggs out of the nest, or spoil them in the nest ; shall, on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol three months, unless he pay upon conviction to the churchwardens for the use of the poor, 20 *s.* for every pheasant, partridge, or egg ; or after one month after his commitment, become bound by recognizance with two sureties, before two justices, in 20 *l.* each, not to offend again in like manner. The recognizance to be returned to the next sessions. 1 *J. c.* 27. *f.* 2.

And by the 7 *J. c.* 11. Every person, who shall take, kill, or destroy, any pheasant or partridge, with setting dogs and nets, or otherwise with any manner of nets, snares, or engines ; shall, on conviction before two justices, by confession or oath of one witness, be committed to gaol for 3 months, unless he forthwith pay to the churchwardens or overseers 20 *s.* for every pheasant or partridge ; and further to become bound by recognizance of 20 *l.* before one justice, that he shall not thereafter kill or destroy any pheasant or partridge. The recognizance to be filed at the next sessions.

Selling or buy-
ing.

3. Every person who shall sell, or buy to sell again, any partridge or pheasant (except they be reared and brought up in houses, or brought from beyond sea) ; shall, on conviction at the assizes or sessions, or before two justices out of sessions, forfeit for every partridge 10 *s.* and for every pheasant 20 *s.* half to him that will sue, and half to the poor. 1 *J. c.* 27. *f.* 4.

4. If any person, of what estate, degree, or condition soever, shall take, kill, or destroy any pheasants or partridges in the night time; and be thereof convicted at the assizes, sessions, or leet; he shall forfeit for every pheasant 20*s.* and for every partridge 10*s.* half to him that shall sue, and half to the lord of the manor, unless such lord shall licence or procure the said taking or killing, in which case the said half shall go to the poor, to be recovered by any one of the churchwardens; and if not paid in 10 days after conviction, he shall be imprisoned for one month: And moreover, besides such forfeiture and imprisonment, he shall give bond to some justice of the peace, with good sureties, not to offend again in like manner for the space of two years. 23 *El.* c. 10.

And by the 9 *An.* c. 25. If any person whatsoever shall take or kill any pheasant or partridge in the night time; he shall, on conviction before one justice, on oath of one witness, forfeit 5*l.* half to the informer, and half to the poor, by distress; for want of distress, to be sent to the house of correction for 3 months for the first offence, and for every other offence 4 months.

5. Every free warrener, lord of a manor, or freeholder seised in his own, or his wife's right, of 40*l.* a year estate of inheritance, or lives estate of 80*l.* or worth in goods 400*l.* may take pheasants and partridges (in the day time only) in his own free warren, manor, or freehold, betwixt *Michaelmas* and *Christmas* yearly. 7 *J.* c. 11. *s.* 7.

6. Every person whatsoever, who shall hawk at, destroy, or kill, any pheasant or partridge, with any kind of hawk, or dog, by colour of hawking, between the first of *July*, and the last of *August*; shall, on conviction before two justices, by confession, or oath of two witnesses, in 6 months after the offence, be committed to gaol for one month, unless he pay upon conviction to the churchwardens or overseers for the use of the poor, 40*s.* for every such hawking at any pheasant or partridge, and 20*s.* for every such pheasant or partridge which he, his hawk, or dog, shall take or kill. 7 *J.* c. 11. *s.* 2.

It is here observable upon the whole, that the killing of partridges and pheasants is prohibited in almost all manner of ways, except hawking only; and that hawking at them is only prohibited in two summer months, when the corn is growing, and the brood is very young: from whence it may be conjectured, that the extraordinary restrictions under this section have been intended in favour of the diversion of hawking, and to preserve these two species of game for that purpose. Which observation (if just) will help to explain some other restrictive clauses, in this part of the title, concerning the *winged game*.

iv. Of pigeons.

1. A lord of a manor may build a dove-coat upon his own land, parcel of the manor; but a tenant of a manor cannot do it without the lord's licence. 3 *Salk.* 248. But any freeholder may build

Who may erect a dove coat.

Who may take in the day time.

At what time hawking at them shall be prohibited.

build a dove-coat on his own ground. *Cro. El.* 548. *Cro. Ja.* 382.

Cove coat not a nuisance.

2. And it hath been adjudged, that erecting of a dove house is not a common nuisance, nor presentable in the leet. *Cro. Ja.* 490, 1.

Killing with dogs, nets, or engines.

3. Every person who shall shoot at, kill, or destroy any house-dove or pigeon with any gun or bow; or shall take, kill, or destroy the same with setting dogs and nets, or with any manner of nets, snares, engines, or instruments whatsoever; shall, on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol three months, unless he pay to the churchwardens for the use of the poor, 20*s.* or after one month after his commitment, become bound by recognizance with two sureties, before two justices, in 20*l.* a piece, not to offend again in like manner. The recognizance to be returned to the next sessions. 1 *J. c.* 27. *f.* 2.

Pigeons trespassing.

4. But if the pigeons come upon my land, and I kill them; the owner hath no remedy against me: tho' I may be liable to the statutes which make it penal to destroy them. *Cro. Ja.* 492.

Pigeons to go to the heir.

5. Doves in a dove house, young and old, shall go to the heir, and not to the executor. 1 *Inst.* 8.

v. Of wild ducks, wild geese, and other water fowl.

Shooting water fowl.

1. Every person who shall shoot at, kill, or destroy with any gun or bow, any mallard, duck, teal, or widgeon; and the same be proved by confession or oath of two witnesses, before two justices; —shall be committed to gaol for three months, unless he pay to the churchwardens for the use of the poor, 20*s.* or after one month after commitment become bound by recognizance with two sureties, before two justices, in 20*l.* each, not to offend again in like manner: Which recognizance shall be returned to the next sessions. 1 *J. c.* 27. *f.* 2.

Not to be taken in the moulting season.

2. No person, between the last day of *May*, and the last day of *August* yearly, shall take, or cause to be taken, any wild ducks, mallards, widgeons, teals, or wild geese, with nets or other engines; on pain of a year's imprisonment, and to forfeit for every fowl so taken 4*d.* half to the king, and half to him that will sue by action of debt: Also the justices of the peace may inquire of, hear and determine the same, as in cases of trespass. 25 *H.* 8. *c.* 11.

Nevertheless, any gentleman, or any other that may dispend 40*s.* a year of freehold, may hunt and take such wild fowl with their spaniels only, without using a net or other engine except the long bow. *Id.*

Id.

3. But by a subsequent statute, if any person whatsoever (between *June* 1. and *Oct.* 1. yearly, 10 *G.* 2. *c.* 32.) shall by hayes, tunnels, or other nets, drive and take any wild duck, teal, widgeon, or any other water fowl, in any place of resort for wild fowl in the moulting season; and shall be convicted thereof before one justice by the oath of one witness; he shall for every such fowl forfeit 5*s.* half to the informer, and half to the poor, by

by distress; rendering the overplus above the penalty and charges of distress: for want of distress, to be committed to the house of correction, not exceeding one month, nor less than 14 days, to be whipt and kept to hard labour. And the nets to be seized and destroyed in presence of the justice. 9 *An. c. 25. s. 4.*

4. No person from *March 31. to June 30.* yearly, shall take or destroy the eggs of any mallard, teal, or other water fowl; on pain of a year's imprisonment, and of forfeiting for every egg one penny, half to the king, and half to him that will sue by action of debt; or, the justices of the peace may determine the same as in cases of trespass. 25 *H. 8. c. 11.* Destroying their eggs.

vi. Of grouse or moor game.

1. If any person whatsoever, shall take or kill any moor, heath-game, or grouse, in the night time; he shall, on conviction before one justice, on oath of one witness, forfeit 5*l.* half to the informer, and half to the poor, by distress; for want of distress, to be sent to the house of correction three months for the first offence, and for every other offence 4 months. 9 *An. c. 25. s. 3.* Killing grouse in the night.

2. Every person who shall shoot at, kill, or destroy, with any gun or bow, any grouse, heath-cock, or moor game; shall, on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol for three months, unless upon conviction he pay to the churchwardens for the use of the poor, 20*s.* or, after one month after his commitment, become bound by recognizance with two sureties in 20*l.* each, before two justices, not to offend again in like manner: the recognizance to be returned to the next sessions. 1 *J. c. 27. s. 2.* Shooting grouse.

3. For the better preserving the red and black game of grouse commonly called heath-cocks, or heath-polts, no person whatsoever on any mountains, hills, heaths, moors, forests, chases, or other wastes, shall presume to burn between *Feb. 2. and June 24.* any grig, ling, heath, furz, goss, or fern; on pain of being committed to the house of correction, for any time not exceeding one month, nor less than ten days, there to be whipt and kept to hard labour. 4 *3 W. c. 23. s. 11.* Burning ling.

As here is no method of conviction directed for this offence, the justices of the peace seem to have no cognizance thereof; but the trial and conviction must be at the assizes, or in the courts at *Westminster.*

In the 5 *An. c. 14.* there are particular directions concerning the burning of ling, heath, or brakes in *Sherwood* forest, and other places in *Nottinghamshire*, which not being of general concern are here omitted.

vii. Of herons.

1. Every person who shall shoot at, kill, or destroy, any hearn, with gun or bow, shall, on conviction before two justices, by confession, or oath of two witnesses, be committed to gaol for three months, unless on conviction he pay to the churchwardens 10*s.* Shooting herons.

for the use of the poor, 20*s.* or, after one month from his commitment, become bound by recognizance with two sureties in 20*l.* each, before two justices, not to offend again in like manner: the recognizance to be returned to the next sessions. 1 *J. c.* 27. *f.* 2.

None shall take but by hawking. 2. No person, without his own ground, shall flea, take, or cause to be taken, by mean of craft or engine, any herons, unless it be with hawking; on pain of 6*s.* 8*d.* to him who shall sue by action of debt; or the sessions may call before them persons suspected, and examine them; and if found in default, may commit them till they have found surety for payment of the forfeiture to the king; and the justices shall have the tenth part of the forfeiture for their labour. 19 *H. 7. c.* 11.

Young herons. 3. And no person, without his own ground, shall take any young herons out of the nest; on pain of 10*s.* in like manner for every young heron. 19 *H. 7. c.* 11.

Eggs. 4. And if any person from *March* 31. to *June* 30. shall take or destroy the eggs of any heron; he shall be imprisoned for a year, and forfeit for every egg, 8*d.* half to the king, and half to him that will sue by action of debt, or before the justices of the peace. 25 *H. 8. c.* 11.

viii. Of other fowl.

In general; No manner of person, from the last day of *March*, to the last day of *June* yearly, shall by day or night, take, or destroy any eggs of any kind of wild fowl, from or in any nest or place, where they shall chance to be laid by any kind of the same wild fowl; on pain of imprisonment for a year, and to forfeit for every egg of a bustard 20*d.* of a bittour or shoveldard 8*d.* and of other wild fowl (except crows, ravens, boscards, and other fowl not used to be eaten) 1*d.* half to the king, and half to him that will sue by action of debt: also the justices of the peace may determine the same, as in cases of trespass. 25 *H. 8. c.* 11.

VI. Laws for preserving the game of fish in particular.

There are some acts relating to this subject, of which, being of less general concern, it is thought sufficient to insert only the titles; *viz.*

(1) An act for the preservation of fishing in the river of *Severn*. 30 *C. 2. c.* 9.

(2) An act for the increase and better preservation of salmon and other fish, in the rivers within the counties of *Southampton* and *Wilts.* 4 *An. c.* 21. In which some alterations are made by the 1 *G. 2. c.* 18.

(3) An act for the better preservation and improvement of the fishery within the river of *Thames*, and for regulating and governing the Company of Fishermen of the said river. 9 *An. c.* 26.

What follows, seems best reducible under these heads :

- i. *The penalty of fishing in ponds and other private fisheries.*
- ii. *Rules about the size, and preserving the breed of fish.*
- iii. *Rules concerning fishing in or near the sea.*
- iv. *Importing fish.*

i. *The penalty of fishing in ponds and other private fisheries.*

1. Any man may erect a fish pond without licence ; because it is a matter of profit, and for the increase of victuals. *2 Inst.* a fish pond. Who may erect

199.

2. If any trespassers in ponds be thereof attainted at the suit of the party, great and large amends shall be awarded according to the trespass ; and they shall have three years imprisonment, and after shall make fine at the king's pleasure (if they have whereof) and then shall find good surety, that after they shall not commit the like trespass : And if they have not whereof to make fine, after three years imprisonment, they shall find like surety ; and if they cannot find like surety, they shall abjure the realm. And if none sue within the year and day, the king shall have the suit. Three years imprisonment and fine.

3 Ed. 1. c. 20.

Note ; Those are trespassers in ponds, who endeavour to take fish therein. *2 Inst.* 200.

3. If any person shall unlawfully break, cut, or destroy any head or dam of a fish pond, or shall wrongfully fish therein, with intent to take or kill fish ; he shall on conviction at the suit of the king, or of the party, at the assizes or sessions, be imprisoned three months, and pay treble damages ; and after the three months expired shall find sureties for his good abearing for seven years, or remain in prison till he doth. *5 El. c. 21. s. 2, 6.* Three months imprisonment and treble damages.

4. If any person shall use any net, angle, hair, noose, troll, or spear ; or shall lay any wears, pots, fish hooks, or other engines ; or shall take any fish by any means or device whatsoever, or be aiding thereunto, in any river, stew, pond, mote, or other water, without the consent of the lord or owner of the water ; and be thereof convicted by confession, or oath of one witness, before one justice, in one month after the offence ; every such offender in taking or killing fish, shall pay any sum not exceeding treble damages, and 10 s. to the overseers for the use of the poor, by distress ; for want of distress, to be committed to the house of correction not exceeding one month, unless he enter into bond with one surety to the party injured, not exceeding 10 l. never to offend in like manner. *22 & 23 C. 2. c. 25. s. 7.* Treble damages and 10 s. to the poor.

And the justice may take, cut, and destroy all such angles, wears, hairs, nooses, trolls, wears, pots, fish hooks, nets or other engines, wherewith such offender shall be apprehended. *S. 8.*

Persons aggrieved may appeal to the next sessions, whose determination shall be final, if no title to any land, royalty, or fishery be therein concerned. S. 9.

Seizing of engines.

5. Whereas divers idle, disorderly, and mean persons, have and keep nets, angles, leaps, piches and other engines for the taking and killing of fish out of the ponds, waters, rivers, and other fisheries, to the damage of the owners thereof, therefore no person hereafter shall have or keep any net, angle, leap, piche, or other engine for the taking of fish; other than the makers and sellers thereof, and other than the owner and occupier of a river or fishery; and except fishermen and their apprentices lawfully authorized in navigable rivers. And the owner or occupier of the river or fishery, and every other person by him appointed, may seize, detain, and keep to his own use, every net, angle, leap, piche, and other engine, which he shall find used or laid, or in the possession of any person fishing in any river or fishery, without the consent of the owner or occupier thereof. And also any person, authorized by a justice's warrant, may in the day time search the houses, outhouses, or other places of any person hereby prohibited to have or keep the same, who shall be suspected to have or keep in his custody or possession any net, angle, leap, piche, or other engine aforesaid, and seize and keep the same to his own use, or cut or destroy the same, as things by this act prohibited to be kept by persons of their degree. 4 & 5 W. c. 23. s. 5.

Felony.

6. By the Black act before mentioned, if any person (during the continuance of the said act) being armed and disguised, shall unlawfully steal or take away any fish out of any river or pond; or (whether armed and disguised or not) shall unlawfully and maliciously break down the head or mound of any fish pond, whereby the fish shall be lost or destroyed, or shall rescue any person in custody for such offence, or procure any other to join with him therein; he shall be guilty of felony without benefit of clergy.

ii. Rules concerning the size, and preserving the breed of fish.

Salmon.

1. If any person shall lay or draw any net, engine, or other device, or cause any thing to be done in the *Severn, Dee, Wye, Teame, Were, Tees, Ribble, Mersey, Dun, Air, Ouze, Swaile, Calder, Wharf, Eure, Darwent, or Trent*, whereby the spawn or fry of salmon, or any-keeper or shedder salmon, or any salmon not 18 inches from the eye to the extent of the middle of the tail, shall be taken and killed; or shall set any bank, dam, hedge, flank, or net cross the same, whereby the salmon may be taken, or hindered from passing up to spawn; or shall between *July 31. and Nov. 12.* (except in the *Ribble*, where they may be taken between *Jan. 1. and Sep. 15*) take any salmon of any kind in any of the said rivers; or shall, after *Nov. 12.* yearly, fish there for salmon with any net less than $2\frac{1}{2}$ inches in the mesh; he shall, on conviction, in one month, before one justice, on view, confession, or oath of one witness, forfeit 5*l.* and the fish, nets, and

and engines; half the said sum to the informer, and half to the poor, by distress; for want of distress, to be committed to the house of correction or gaol, not more than three months, nor less than one, to be kept to hard labour, and suffer such other corporal punishment as the justice shall think fit: The nets and engines to be cut or destroyed, in presence of the justice: The banks, dams, hedges, and flanks, to be demolished at the charge of the offender, to be levied in like manner. 1 G. 2. c. 18. s. 14.

Note; It is not said, who shall have the fish; so that it seemeth that they are forfeited to the king.

And no salmon out of the said rivers shall be sent to *London*, under six pounds weight; on pain that the sender, buyer, or seller, on the like conviction, shall forfeit 5 *l.* and the fish, half to the informer, and half to the poor, by distress; rendering the overplus over and above the charges of distress: for want of sufficient distress, to be committed to the house of correction or gaol, to be kept to hard labour for three months, if not paid in the mean time. *Id.* s. 15.

And persons aggrieved may appeal to the next sessions. *Id.* s. 17.

2. No salmon shall be taken in the *Humber, Ouse, Trent, Done, Arre, Derwent, Wharfe, Nid, Yore, Swale, Tese, Tyne, Eden*, or any other water wherein salmon are taken, between Sep. 8. and Nov. 11. Nor shall any young salmon be taken at *Milpools* (nor in other places, 13 R. 2. s. 1. c. 19.) from *Midapril* to *Midsummer*; on pain of having the nets and engines burnt for the first offence; for the second, imprisonment for a quarter of a year; for the third, a whole year; and as the trespass increaseth, so shall the punishment. And overseers shall be assigned to inquire hereof. 13 Ed. 1. s. 2. c. 47. That is, under the great seal, and by authority of parliament. 2 Inst. 477.

And no person shall put in the waters of *Thames, Humber, Ouse, Trent*, nor any other waters, in any time of the year, any nets called stalkers, nor other nets or engines whatsoever, by which the fry or breed of salmons, lampreys, or any other fish may in any wise be taken or destroyed; on the like pain. 13 R. 2. s. 1. c. 19.

And the waters of *Lon, Wyre, Mersee, Rybbyl*, and all other waters in *Lancashire*, shall be put in defence as to taking of salmons, from *Michaelmas* to *Candlemas*, and in no other time of the year. And conservators shall be appointed in like manner. 13 R. 2. s. 1. c. 19.

And the justices of the peace (and the mayor of *London* on the *Thames* and *Medway*) shall survey the offences in both the acts abovementioned; and shall survey and search all the weirs in such rivers, that they shall not be very strait for the destruction of such fry and brood, but of reasonable wideness after the old assize used or accustomed: and they shall appoint under-conservators, who shall be sworn to make like survey, search and punishment. And they shall inquire in sessions, as well by their office, as at the information of the under-conservators, of all defaults aforesaid, and shall cause them which shall be thereof indicted, to come before

them; and if they be thereof convicted, they shall have imprisonment, and make fine at the discretion of the justices: and if the same be at the information of an under-conservator, he shall have half the fine. 17 R. 2. c. 9.

Spawn and fish
under size.

3. No person, of what estate, degree, and condition soever he be, shall take and kill any young brood, spawn, or fry of fish; nor shall take and kill any salmon or trouts, not being in season, being kepper or shedder; nor any pike or pikerel not being in length 10 inches fish or more; nor any salmon not being in length 16 inches fish; nor any trout not being in length 8 inches fish; nor any barbel not being in length 12 inches: and no person shall fish or take fish by any device, but only with net or trammel, whereof the mesh shall be two inches and an half broad (angling excepted, and except smelts, loches, minnies, bulheads, gudgeons, and eels): on pain of forfeiting 20*l.* for every offence, and also the fish, nets, and engines. 1 *El.* c. 17.

And the conservators of rivers may inquire hereof by a jury; and in such case they shall have the fines. *Id.*

The leet also may inquire hereof; and then the forfeiture shall go to the lord of the leet. And if the steward do not charge the jury therewith, he shall forfeit 40*s.* half to the king, and half to him that shall sue. And if the jury conceal the offence, he may impanel another jury to inquire of such concealment; and if it is found, the former jury shall forfeit every one 20*s.* to the lord of the leet. *Id.*

And if the offence is not presented in the leet, within a year, then it may be heard and determined at the sessions or assizes. (Saving the right of the conservators.) *Id.*

Nets standing
day and night.

4. No person shall fasten any nets over rivers, to stand continually day and night; on pain of an hundred shillings to the king. 2 *H.* 6. c. 15.

iii. Rules concerning fishing in or near the sea.

Lobsters.

1. No person shall take, kill, or destroy any lobsters on the coast of *Scotland*, from *Jun.* 1. to *Sep.* 1. on pain of 5*l.* to be recovered by any person who shall inform and sue for the same, on a summary complaint before two justices of the shire on the coast where the offence shall be committed. 9 *G.* 2. c. 33. s. 4.

Erecting a new
wear.

2. Every person who shall set up any new wear along the sea shore, or in any haven, harbour, or creek, or within 5 miles of the mouth of any haven or creek, shall, on conviction before one justice, or mayor, forfeit for every offence 10*l.* half to the king, and half to him that shall sue; to be levied by the constables or churchwardens, by distress. 3 *J.* c. 12. s. 2.

Spawn of sea
fish.

3. Every person who shall willingly take, destroy, or spoil any spawn, fry, or brood of any sea fish, in any wear or other engine or device whatsoever; shall forfeit for every offence 10*l.* in like manner. 3 *J.* c. 12. s. 2.

Size of nets at
sea.

4. And every person who shall fish in any haven, harbour, or creek, or within 5 miles of the mouth of any haven, harbour, or creek of the sea, with any draw-net, or drag-net under 3 inches mesh,

mesh, *viz.* 1 $\frac{1}{2}$ inch from knot to knot (except for the taking of smoulds in *Norfolk* only), or with any net with canvas, or other engine or device, whereby the spawn, fry, or brood of sea fish may be destroyed; shall in like manner forfeit such net, and also 10*s.* for every offence, half to the poor, and half to him that shall sue. 3 *J. c.* 12. *f.* 2.

But this act shall not extend to any net of lesser mesh, only for taking of herrings, pilchards, sprats, or lavidnian. *Id.* *f.* 3.

And by a subsequent statute, if any person shall use at sea, on the *English* coast, any trawl-net, drag net, or set net, for catching of any fish (except herrings, pilchards, sprats or lavidnian) which hath the mesh less than 3 $\frac{1}{2}$ inches from knot to knot; or which hath a false or double bottom; or shall put one net behind another; he shall, on conviction (after summons) before one justice where the offender resides or shall be found, on oath of two witnesses, in one month after the offence, forfeit the same, and also 20*l.* half to the informer, and half to the poor, by distress; for want of sufficient distress, to be committed to gaol for 12 months; and the nets to be burnt. 1 *G. 2. c.* 18. Persons aggrieved may appeal to the next sessions. *Id.*

5. By the same act of 1 *G. 2.* if any person shall bring to shore, or expose to sale any fish less than the following sizes from the eyes to the extent of the tail, *viz.* bret or turbet 16 inches, brill or pearl 14, codlin 12, whiting 6, bass and mullet 12, sole 8, plaice or dab 8, flounder 7; he shall forfeit the fish to the poor; and also 20*s.* half to the informer, and half to the poor; to be levied in like manner: for default of payment, or of sufficient distress, to be sent to the next house of correction, or other common gaol of the county, to be severely whipt, and kept to hard labour 6 days, and not longer than 14. Persons aggrieved may appeal to the next sessions.

iv. Importing fish.

1. If any ling, herring, cod, or pilchard, salmon, eels, or con- May be seized.
gers, taken by foreigners, shall be imported or exposed to sale; any person may seize the same, half for himself, and half for the poor. 18 *C. 2. c.* 2.

2. And by the 1 *G. 2. c.* 18. and 9 *G. 2. c.* 33. no fish Penalty, 100*l.*
taken by, or received of any foreigner, except protestants inhabiting in *England*, shall be imported (except eels, stock fish, anchovies, sturgeon, botarge, or cavear, lobster, and turbets); on pain of 100*l.* and the master of the vessel 50*l.* half to the poor, and half to the informer who shall sue in 12 months in any of the courts at *Westminster*.

For fishing, so far as the salt duties are concerned therein, may be consulted that part of the title *Excise*, which treateth of the duties upon salt.

- A. Appointment of a gamekeeper; on the 22 & 23 C. 2. c. 25. f. 2. 5 An. c. 14. f. 4. and 3 G. c. 11. f. 1.

I A. L. esquire, lord of the manor of — do hereby nominate, authorize, and appoint A. G. of P. in the county of — yeoman, to be my gamekeeper of and within my said manor of — in the county aforesaid, with full power, licence, and authority to kill any hare, pheasant, partridge, or any other game whatsoever, in and upon my said manor of — for my sole use, and immediate benefit; and also to take and seize all such guns, bows, greyhounds, setting dogs, lurchers, or other dogs to kill hares or conies, ferrets, tramels, lowbells, hays or other nets, harepipes, snares or other engines for the taking and killing of conies, hares, pheasants, partridges, or other game, as within the precincts of my said manor of — shall be used by any person or persons who by law are prohibited to keep or use the same. Given under my hand and seal, this — day of — in the — year &c.

- B. Warrant to search for dogs and engines; on the 22 & 23 C. 2. c. 25. f. 2.

Westmorland. { To —

WHEREAS complaint hath been made unto me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. I. of — in the said county, yeoman, that he the said A. I. hath good ground to suspect and doth suspect that A. O. of — aforesaid, in the county aforesaid, yeoman, being a person in no respect qualified by the laws of this realm so to do, hath and keepeth in his custody a greyhound [gun, net, &c.] to kill and destroy the game: These are therefore to command you in his majesty's name to enter into, and search in the day time, the houses, outhouses, and other places of him the said A. O. at — aforesaid, and if you there find any grehound, &c. that you seize and keep the same for the use of A. L. esquire, lord of the manor of — in which manor the said houses, outhouses, and other places, are situate and do lie, or therwise that you cut in pieces or destroy the same. Given under my hand and seal the — day of — in the — year &c.

- C. Warrant against a person for keeping dogs and engines; on the 5 An. c. 14. f. 4.

Westmorland. { To —

WHEREAS complaint hath this day been made before me J. P. esquire, one of his majesty's justices of the peace in and for the county of — aforesaid, upon the oath of A. I. of — in

—— in the said county, yeoman, that A. O. of the parish of
—— in the said county, shoemaker, doth keep [or use] a grey-
hound &c. to kill and destroy the game, he the said A. O. not being
qualified by the laws of this realm so to do, contrary to the statutes
in such case made and provided: These are therefore in his majesty's
name to command you, that you do forthwith upon sight hereof ap-
prehend the said A. O. and bring him before me to answer the pre-
misses, and to be further dealt with according to law. Given under
my hand and seal the —— day of —— in the —— year
of the reign of ——.

D. Conviction of keeping dogs and engines; on
the 5 An. c. 14. s. 4.

Westmorland. **B**E it remembred, that on the —— day of
—— in the —— year of the reign of
—— of Great Britain, France, and Ireland, king, defender of
the faith, and so forth, at —— in the county aforesaid, A. I.
of —— cometh before me J. P. esquire, one of the justices of our
said lord the king, assigned to keep the peace of our said lord the
king in the said county, and also to hear and determine divers felo-
nies, trespasses, and other misdemeanors in the said county committed,
and giveth me the said justice to understand and be informed, that
one A. O. of the parish of —— in the county aforesaid, shoemaker,
on the —— day of —— in the —— year afore-
said, at the parish aforesaid, in the county aforesaid, did keep and
use a certain dog, called a greyhound, to kill and destroy the game,
he the said A. O. not being qualified by the laws of this realm so
to do, against the form of the statute in that case made and provided:
And afterwards upon the aforesaid day, and in the year first above-
mentioned, he the said A. O. being brought before me by my war-
rant for that purpose, is asked by me the said justice, if he can say
any thing for himself, why he the said A. O. should not be convicted
of the premisses above charged upon him in form aforesaid; who
pleadeth that he is not guilty of the said offence: nevertheless the
same being now fully and duly proved before me, upon the oath of
A. W. a credible witness, it manifestly appears to me the said justice,
that he the said A. O. is guilty of the premisses above charged upon
him in the said information. It is therefore considered by me the said
justice, that he the said A. O. be convicted, and is convicted, of the
premisses aforesaid; And that he the said A. O. for his offence afore-
said, hath forfeited the sum of 5l. of lawful money of Great Bri-
tain, to be distributed as the statute aforesaid doth direct. In wit-
ness whereof I the said justice to this present record of the conviction
aforesaid, have set my hand and seal at —— aforesaid, in the
county aforesaid, the day and year first above written.

E. Warrant to distrain 5*l.* for keeping dogs or engines; on the 5 *An. c. 14. s. 4.*

Westmorland. } To ———

WHEREAS A. O. of ——— in the said county, shoemaker, is this day convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. I. a credible witness, for that he the said A. O. being a person not qualified by the laws of this realm so to do, on the ——— day of ——— in the ——— year of the reign of ——— did keep and use in the parish of ——— aforesaid, in the county aforesaid, a certain dog called a greyhound, to kill and destroy the game, by virtue whereof he the said A. O. hath forfeited the sum of 5*l.* to be distributed as herein after is mentioned: These are therefore in his said majesty's name, to command you to levy the said sum by distress of the goods of him the said A. O. and if within the space of [four] days next after such distress by you taken, the said sum, together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods so by you distrained, and out of the money arising by such sale, that you do pay one half of the said sum of 5*l.* to A. I. of ——— in the said county, yeoman, who informed me of the said offence, and the other half of the said sum of 5*l.* to the overseers of the poor of the parish of ——— aforesaid, where the said offence was committed, for the use of the poor of the said parish; returning the overplus on demand unto him the said A. O. the reasonable charges of taking, keeping, and selling the said distress, being first deducted. And if sufficient distress cannot be found of the goods of the said A. O. whereon to levy the said sum of 5*l.* that then you certify the same to me, together with the return of this precept. Given under my hand and seal the ——— day of ——— in the ——— year of ———.

F. Commitment for want of distress, for keeping dogs and engines; on the 5 *An. c. 14. s. 4.*

Westmorland. } To the constable of ——— in the said county,
and to the keeper of the house of correction at
——— in the said county.

WHEREAS A. O. of ——— in the said county, shoemaker, was this day convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. a credible witness, for that he the said A. O. not being a person by the laws of this realm qualified so to do, on the ——— day of ——— in the ——— year of ——— did keep and use in the parish of ——— aforesaid, in the county aforesaid, a certain dog called a greyhound, to kill and destroy the game, by virtue whereof he the said A. O. hath forfeited the sum of 5*l.* of
lawful

lawful money of Great Britain; And whereas on the said ——— day of ——— in the year aforesaid, I did issue my warrant to the constable of ——— to levy the said sum of 5*l.* by distress and sale of the goods of him the said A. O. and to distribute the same according as is directed by the statute in that behalf made; and whereas it duly appears to me, as well on the oath of the said constable, as otherwise, that he the said constable hath used his best endeavours to levy the said sum on the goods of the said A. O. as aforesaid, but that no sufficient distress can be had whereon to levy the same: These are therefore to command you the said constable of ——— aforesaid, to apprehend the body of the said A. O. and him safely to convey to the house of correction at ——— in the said county, and there deliver him to the keeper thereof, together with this precept. And I do also hereby command you, the said keeper of the said house of correction, to receive and take into your custody the said A. O. for the space of 3 months: and for so doing this shall be your sufficient warrant. Given under my hand and seal the ——— day of ——— in the ——— year &c.

G. Certiorari bond, on a conviction for keeping dogs or engines; on the 5 *An. c. 14. s. 2.*

K NOW all men by these presents &c. Whereas the abovebound A. O. was lately convicted before J. P. esquire, one of his majesty's justices of the peace in and for the county of ——— aforesaid, of keeping and using at ——— aforesaid in the said county, a greyhound to kill and destroy the game; And whereas the said A. O. hath since his said conviction sued out his majesty's writ of certiorari to remove the same, and the proceedings thereupon, before the king himself wherever he shall be in England on ——— [the day of the return of the certiorari]: The condition of the above obligation is such, that if the abovebound A. O. do and shall (according to the true intent and meaning of the statute in such case made) well and truly pay to the said A. I. within 14 days after the same conviction shall be confirmed, or a procedendo granted thereupon, his full costs and charges which he shall sustain touching or concerning the said conviction and removal thereof by the said writ of certiorari; then the above-written obligation shall be void, otherwise of force.

H. Warrant against a higler having game in his possession; on the 5 *An. c. 14. s. 2.*

Westmorland. } To the constable of ———

W HEREAS A. I. of ——— hath this day made oath before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, that on the ——— day of ——— now last past, he the said A. I. did see in the possession of A. O. of ——— in the parish of ——— in the county aforesaid, inn-keeper,

keeper, at _____ aforesaid, in the parish and county aforesaid, in the house of him the said A. O. then and there one hare [or, did see him offer to sell one hare, or as the case shall be] he the said A. O. being no way qualified by the laws of this realm, to have the said hare in his custody or possession; against the form of the statute in that case made and provided: These are therefore to command you, to bring the said A. O. before me or some other of his majesty's justices of the peace for the said county, to answer the premisses, and to be further dealt withal according to law. Given under my hand and seal, the _____ day of _____ in the _____ year &c.

I. Conviction of a higler for having game in his possession; on the 5 An. c. 14. s. 2.

Westmorland. **B**E it remembred, that on the _____ day of _____ in the _____ year of the reign of _____ at _____ in the county aforesaid, A. I. of _____ cometh before me J. P. esquire, one of the justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and giveth me the said justice to understand and be informed, that one A. O. of the parish of _____ in the county aforesaid, victualler, on the _____ day of _____ in the _____ year of _____ at the parish aforesaid in the county aforesaid, had in his custody and possession one hare, he the said A. O. being no way qualified by the laws of this realm to have the said hare in his custody or possession: Whereupon the said A. O. being brought before me by my warrant for that purpose at _____ aforesaid, in the county aforesaid, on the said _____ day of _____ in the year aforesaid, in order to make his defence against the said charge contained in the said information; and having heard the same, he the said A. O. is asked by me the aforesaid justice, if the said A. O. can say any thing for himself, why he should not be convicted of the premisses above charged upon him in form aforesaid; who pleadeth that he is not guilty of the said offence; but the same being now fully and duly proved upon the oath of A. W. a credible witness, it manifestly appears to me the said justice, that he the said A. O. is guilty of the premisses above charged upon him in the said information. It is therefore adjudged by me the said justice, that he the said A. O. be convicted, and he is hereby convicted of the premisses aforesaid; and that he the said A. O. hath forfeited the sum of 5l. of lawful money of Great Britain for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made. In witness whereof I the said justice to this record of the conviction aforesaid have set my seal, at _____ aforesaid, in the county aforesaid, the day and year first above written.

K. Warrant

A. Warrant to levy 5 l. on the goods of a higher convicted of having game in his custody; on the 5 An. c. 14. f. 2.

Westmorland } To the constable of ———

WHEREAS A. O. of ——— in the parish of ——— in the county aforesaid, higher, is on this present ——— day of ——— in the ——— year of the reign of ——— duly convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. a credible witness, for that he the said A. O. on the ——— day of ——— in the ——— year of ——— at the parish of ——— aforesaid, in the county aforesaid, had in his custody and possession one hare, he the said A. O. being no way qualified by the laws of this realm to have the said hare in his custody or possession, against the form of the statute in that case made, by reason whereof, he the said A. O. hath forfeited the sum of 5 l. These are therefore to require you to levy the said sum of 5 l. by distress of the goods of him the said A. O. and if within the space of [five] days next after such distress by you taken, the said sum of 5 l. together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods so by you distrained as aforesaid, and out of the money arising by such sale, that you do pay one half of the said sum of 5 l. to A. I. of ——— yeoman, who informed me of the said offence, and the other half to the poor of the parish of ——— aforesaid, within which parish the said offence was committed; returning to him the said A. O. the overplus on demand, the reasonable charges of taking, keeping, and selling the said distress, being first deducted. And if sufficient distress cannot be had of the goods of the said A. O. that you certify the same to me together with the return of this precept. Given under my hand and seal the ——— day of ——— in the ——— year of ———

L. Commitment on the same for want of distress; on the 5 An. c. 14. f. 2.

Westmorland } To the constable of ——— in the said county,
and to the keeper of the house of correction at
——— in the said county.

WHEREAS A. O. of ——— in the said county, higher, was on the ——— day of ——— duly convicted before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, upon the oath of A. W. of ——— a credible witness, for that he the said A. O. on the ——— day of ——— in the ——— year of ——— at the parish of ——— aforesaid, in the county aforesaid, had in his custody and possession one hare, he the said A. O. being no way qualified by the laws of this realm to have the said hare in his custody or possession, against the form of the statute in that case made, by reason whereof he the said

A. O. hath forfeited the sum of 5 l. And whereas on the said ——— day of ——— in the year aforesaid, I did issue my warrant to the constable of ——— to levy the said sum of 5 l. by distress and sale of the goods of him the said A. O. and to distribute the same according as is directed by the said statute; And whereas it duly appears to me, as well on the oath of the said constable of ——— as otherwise, that he the said constable of ——— hath used his best endeavours to levy the said sum on the goods of the said A. O. as aforesaid, but that no sufficient distress can be found whereon to levy the same; These are therefore to require you the constable of ——— aforesaid, to carry the said A. O. to the said house of correction at ——— aforesaid, and deliver him to the said keeper thereof, together with this precept. And you the said keeper are hereby commanded to receive into your custody in the said house of correction him the said A. O. and him there safely to keep for the space of three months, without bail or mainprise; and for your so doing this shall be your sufficient warrant. Given under my hand and seal the ——— day of ———.

M. Mittimus for carrying a gun; on the 33 H. 8.
c. 6. from Mr. Dalton.

Westmorland } To the keeper of his majesty's gaol at ——— in
the county of ——— aforesaid, and to his deputy
or deputies there; and to every of them.

FORASMUCH as this present day, A. I. of ——— yeoman, and B. I. of ——— yeoman, did arrest and bring before me at ——— in the said county, one A. O. late of ——— in the said county, taylor, whom they had seen and found the same day (as they said) shooting in a hand gun, charged with powder and hail shot, at a coney, in a certain place in ——— within the said county, called ——— contrary to the law of the realm, and thereupon prayed that justice might be done in that behalf: J ——— esquire, being the next justice of the peace in the said county to the place aforesaid, did then at ——— aforesaid, upon the said request, take the examination of the said A. O. and did also then and there hear the proofs of them the said A. I. and B. I. touching the said offence; And for that it did then manifestly appear unto me, as well by the testimonies of them the said A. I. and B. I. as also by the plain confession of him the said A. O. that he the said A. O. had not then lands, tenements, fees, annuities or offices, to the yearly value of an hundred pounds, and that he had shot in the said hand gun in manner and form as is aforesaid: I do send you herewithal the body of him the said A. O. as lawfully convicted of the said offence before me, requiring you in his majesty's name, to receive him into your said gaol, and him there safely to keep, until he shall have truly paid the pain and forfeiture of 10 l. of lawful money of Great Britain, laid upon him for his said offence by the statute made in the three and thirtieth year of the reign of King Henry the eighth; that is to say, the one moiety thereof to our sovereign lord the king, and the other moiety to them the said
A. I.

A. I. and B. I. the first bringers of him before me. And this shall be your sufficient warrant in this behalf. Hereof fail you not, as you will answer for your contempt at your peril. Given under my hand and seal at ———— afore said, in the county afore said, the ———— day of ———— in the ———— year of the reign of ————.

N. Record of the conviction for carrying a gun ;
on the 33 H. 8. c. 6. from Mr. Dalton.

Westmorland **B**E it remembred, that on the ———— day of ————
in the ———— year of the reign of ———— A. I.
of ———— yeoman, and B. I. of ———— yeoman, one A. O. late
of ———— in the county afore said, taylor, found and saw, at ————
in the county afore said, the day and year afore said, with a hand
gun charged with gunpowder and leaden hail shot, shooting and
discharging the said gun, at a certain coney then being in a cer-
tain place there, called ———— against the form of the statute in
that case made and provided; and therefore, the day and year
afore said, him the said A. O. at ———— afore said, they did arrest,
and at ———— afore said before me ———— esquire, one (and next
unto the said place called ————) of the justices of our said
lord the king, assigned to keep the peace in the said county, and also
to hear and determine divers trespasses and other misdemeanors in
the same county committed, then with them did bring, requesting
thereupon justice to be done; which request being heard, I the said
J. P. at ———— afore said, the day and year afore said, duly there-
upon have examined the afore said A. O. at ———— afore said, and
the proofs of the afore said A. I. and B. I. in this behalf have
taken: And because that as well by the proofs afore said, as by the
confession of him the said A. O. at ———— afore said, then and
there it hath appeared to me manifestly, that the afore said A. O.
at ———— afore said, when he had not in his own right, nor in
the right of his wife, to his own use, nor any other to the use of
the said A. O. had lands, tenements, fees, annuities or offices to
the yearly value of one hundred pounds, in the hand gun afore said,
in manner and form afore said, did shoot, against the form of the
statute afore said; I the said J. P. the afore named A. O. at ————
afore said, the day and year afore said, to the next gaol of our said
lord the king, at ———— in the county afore said (of the trespass
afore said before me convicted) have committed, there to remain
until the penalty and forfeiture of 10l. of lawful money of Great
Britain, he shall truly pay or cause to be paid, to wit, one moiety
thereof to our said lord the king, and the other moiety thereof to the
said A. I. and B. I. the first bringers of the said A. O. before me
as is afore said. In witness of all which, I the afore said J. P. to
these presents have put my seal. Given at ———— afore said, the
day and year first above written.

O. Con-

- O. Conviction for killing deer, from *Tremaine's entries*, 328, 329. which conviction was on the 13 C. 2. c. 10. but is here altered to grounds inclosed, to bring the offence within the 3 W. c. 10. which is done by the addition only of that single word [*inclosed*,] with the alteration of the penalty.

Cumberland **B**E it remembred, that on the third day of September in the year of the reign of our lord Charles the second now king of &c. the thirty second, one Benjamin Granger of — gentleman, cometh before me John Aglionby, esquire, one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in the said county of C. at G. in the same county, and giveth me to understand and be informed, that one James Dobson, late of — J. B. late of — and L. M. late of — on the 25th day of August in the year of the reign of our said lord the now king, the 32d aforesaid, in a certain park then of the most noble Henry duke of Norfolk, called Graystock park, in the parish of Graystock, in the said county, then and long before and yet being ground inclosed, wherein deer then were and long before had been usually kept, unlawfully hunted, and a certain fallow deer of the said duke then in the same park killed, took, and carried away, without the consent of the said duke then owner of the said park, or of Andrew Huddleston, esquire, then being chiefly intrusted with the custody of the same park, against the form of the statute in such case made and provided: And afterwards, to wit, on the aforesaid third day of September in the 32d year aforesaid, two credible witnesses, that is to say, J. H. of — and T. B. of — come before me the said justice assigned &c. at G. aforesaid, and before me the said justice assigned &c. upon their oath on the holy gospel of God to them then and there by me the aforesaid justice assigned &c. by the authority of the statute aforesaid administred and given, do depose, swear, and say, and each of them doth depose, swear, and say, upon their oath aforesaid, that the aforesaid J. D. J. B. and L. M. on the aforesaid 25th day of August in the 32d year aforesaid, in the aforesaid park and ground inclosed, of the aforesaid duke of Norfolk, in the parish of Graystock aforesaid, unlawfully hunted, and the aforesaid fallow deer of him the said duke, then in the said park and ground inclosed, took, killed, and carried away, without the consent of the same duke then owner of the said park and ground inclosed, or of the aforesaid A. H. esquire, then with the custody of the same park and ground inclosed as is aforesaid chiefly intrusted. And thereupon they the aforesaid I. D. J. B. and L. M. on the said 3d day of September in the 32d year aforesaid, before me the said justice assigned &c. by the oath of two credible witnesses aforesaid, according to the form of the statute aforesaid, are, and every of them is, convicted. And for

for the offence aforesaid, every of them the aforesaid J. D. J. B. and L. M. according to the form of the statute aforesaid, hath severally forfeited the sum of 30*l.* one third part thereof to the aforesaid R. G. the informer in this behalf as is aforesaid, another third part thereof to the use of the poor of the said parish of G. within which parish the offence aforesaid was committed, and the other third part thereof to the duke aforesaid, owner of the deer aforesaid. In witness whereof I the aforesaid justice to this present record of the conviction as aforesaid, have set my hand and seal, at G. aforesaid, on the day and year first abovementioned.

John Aglionby.

P. Warrant of distress for hunting and killing deer; on the 3 *W. c.* 10. *s.* 2.

Westmorland. } To ———

WHEREAS A. O. of ——— yeoman, is this day duly convicted before me J. P. esquire, one of his majesty's justices assigned to keep the peace in the said county, and also to hear and determine divers trespasses and other misdemeanors in the said county committed, by the oath of A. W. of ——— yeoman, a credible witness, for that he the said A. O. on the ——— day of ——— in the ——— year of ——— in a certain Park, then of Sir P. M. baronet, in the parish of ——— in the said county, then and long before and yet being ground inclosed, wherein deer then were and long before had been usually kept, unlawfully did hunt, and a certain fallow deer of the said Sir P. M. baronet, then in the same Park did kill, take, and carry away, without the consent of the said Sir P. M. baronet, then owner of the said Park, or of any other person then chiefly intrusted with the custody of the same Park, against the form of the statute in such case made and provided; by reason whereof he the said A. O. hath forfeited the sum of 30*l.* of lawful money of Great Britain, to be distributed as herein after is mentioned:

These are therefore in his said majesty's name to command you to levy the said sum by distress of the goods and chattels of him the said A. O. And if within the space of [six] days next after such distress by you taken, the said sum of 30*l.* together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained as aforesaid; and out of the money arising by such sale, that you do pay one third part of the said sum of 30*l.* to A. I. of ——— in the said county, yeoman, who informed me of the said offence; and one third part unto the churchwardens or overseers of the poor of the said parish of ——— for the use of the poor of the said parish, and the other third part to the said ——— owner of the said deer; returning to him the said A. O. the overplus upon demand, the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if sufficient distress cannot be had or found, by and on which the said sum of 30*l.* may be levied, you are hereby required to certify the same to me, within two days after the date of this present war-

rant. Given under my hand and seal, at ——— in the county
aforesaid, the ——— day of ——— in the ——— year of the
reign of ———.

Q. Commitment for want of distress, for hunting
and killing deer; on the 3 *W. c.* 10. *f.* 2.

Westmorland. { To the constable of ——— in the said county,
and to the keeper of the common gaol at ———
in the said county, and to the chief officer of
the market town of ——— in the said county,
and to every of them.

WHEREAS A. O. of ——— labourer, was on the ——— day of
——— duly convicted before me J. P. esquire, one of his
majesty's justices assigned to keep the peace in the said county, and also
to hear and determine divers felonies, trespasses, and other misde-
meanors in the said county committed, by the oath of A. W. of ———
yeoman, a credible witness, for that he the said A. O. on the ———
day of ——— in the ——— year ——— in a certain Park then
of ——— esquire, in the parish of ——— in the said county, then
and long before and yet being ground inclosed wherein deer then were
and long before had been usually kept, unlawfully did hunt, and a
certain fallow deer of the said ——— esquire, then in the same
Park did kill, take and carry away, without the consent of the said
——— then owner of the said Park, or of any other person then
chiefly intrusted with the custody of the same Park, against the form
of the statute in such case made and provided; by reason whereof he
the said A. O. hath forfeited the sum of 30*l.* of good and lawful
money of Great Britain; And whereas on the said ——— day of
——— in the year aforesaid, I did issue my warrant to the consta-
ble of ——— to levy the said sum of 30*l.* by distress of the goods
and chattels of him the said A. O. and to pay over the said sum of
30*l.* according as is directed by the statute aforesaid; And whereas
it duly appears to me, as well on the oath of the said constable of
——— as otherwise, that he the said constable of ——— hath
used his best endeavours to levy the said sum of 30*l.* on the goods and
chattels of the said A. O. as aforesaid, but that no sufficient distress
can be found whereon to levy the same: Therefore in pursuance of
the statute aforesaid, I do hereby command you the said constable of
——— him the said A. O. to apprehend and safely to convey to the
said common gaol at ——— aforesaid in the county aforesaid, and
him to deliver to the keeper thereof aforesaid, together with this pre-
cept: And I do hereby command you the said keeper of the gaol afore-
said, to receive into your custody in the said gaol him the said A. O.
and him there safely to keep for the space of one whole year now next
ensuing; saving that within the said year you deliver him the said
A. O. to the chief officer of ——— being the next market town
next adjoining to the place where the said offence was committed, or
to his under officer or officers, together with this precept, who are
hereby respectively required to set the said A. O. in the pillory in the
said market town by the space of one hour on some market day. And

hereof fail not, as you will respectively answer the same at your perils. Given under my hand and seal, at _____ in the said county, the _____ day of _____ in the year _____.

R. Warrant to search for venison or skins; on the
3 W. c. 10. s. 3.

Westmorland. } To the constable of _____

WHEREAS A. I. of _____ in the said county, yeoman, hath this day made oath before me J. P. esquire, one of his majesty's justices of the peace in and for the said county, that divers fallow deer have of late been unlawfully killed in, and taken and carried away from the park and ground inclosed of _____ at _____ in the said county, and that he the said A. I. hath just cause to suspect, and doth suspect, that venison or the skins of deer, or toys whereby to take and kill deer, are concealed in the houses, outhouses, or other places belonging to the said houses of A. O. of _____ yeoman, and B. O. of _____ yeoman, at _____ aforesaid in the county aforesaid: These are therefore in his said majesty's name, and by virtue of the statute in that case made and provided, to require you that you do forthwith upon sight hereof, enter into and search the said houses, outhouses, and other places belonging to the said houses, of them the said A. O. and B. O. at _____ aforesaid; and if on such search you shall there find any venison, or skin of any deer, or toys aforesaid, that you do apprehend the person or persons, in whose houses, outhouses, or other places aforesaid, such venison, skin, or toys shall be found, and him or them so apprehended do carry before some of his said majesty's justices of the peace in and for the said county, to be examined concerning the premisses, and further dealt withal according to law. Given under my hand and seal, the _____ day of _____ in the year _____.

Gaming.

1. **M**R. Dalton says, that playing at cards and dice, and the like, are not prohibited by the common law; neither are they *malum in se*, of their own natures, but only prohibited by statute. *Dalt. c. 46.* Gaming not an offence at common law.

2. But it hath been said, that all common gaming houses are nuisances in the eye of the law, as being great temptations to idleness, and apt to draw together numbers of disorderly persons. *1 Haw. 198.* Gaming house a nuisance.

3. By the statute of the 33 H. 8. c. 9. No person shall for his gain, lucre, or living, keep any common house, alley, or place of bowling, coyting, cloysh cayts, half bowl, tennis, dicing table, or carding, or any unlawful game; on pain of 40 s. a day. *33 H. 8.* Gaming houses prohibited by the statute.

S. 11.

But it was resolved upon this clause, in the third year of *J. 1.* that if the guests in an inn or tavern, call for a pair of dice or tables, and for their recreation play with them, or if any neighbours play at bowls for their recreation, or the like, these are not within this statute; for altho' the games be used in any inn, tavern, or other house, yet if the house be not kept for gaming, lucre, or gain, but they play only for recreation, and for no gain to the owner of the house, this is not within the statute, nor is such person that plays in such house that is not kept for lucre or gain, within the penalty of that law. *Dalt. c. 46.*

And moreover, by the same statute it is further enacted, that every person using and haunting any the said houses and plays, and there playing, shall forfeit 6 s. 8 d. 33 *H. 8. c. 9. f. 12.*

And all and every justices of the peace, mayors, sheriffs, and other head officers, may enter all such houses and places, where such games shall be suspected to be holden; and as well the keepers of the same, as also the persons there resorting and playing, may take, arrest, and imprison, and keep in prison, until the said keepers have found sureties to the king's use, to be bound by recognizance or otherwise, no longer to use, keep, or occupy any such house, play, game, alley, or place; and also that the persons there so found, be in like case bound by themselves, or with sureties, no more to play, haunt, or exercise from thenceforth, in, at, or to any of the said places, or at any of the said games. *Id. f. 14.*

And the mayors, sheriffs, bailiffs, constables, and other head officers within every city, borough, or town, shall make due search weekly, or at the furthest once a month, in all places where any such houses or places shall be suspected to be kept; and if they shall not make such search at the furthest once a month, if the case so require, every such person offending shall forfeit 40 s. for each month. *Id. f. 15.*

And by the same act, no manner of artificer, handicraftsman, husbandman, apprentice, labourer, servant at husbandry, journeyman, or servant of artificer, mariners, fishermen, watermen, or any serving man, shall play at the tables, tennis, dice, cards, bowls, clash coyting, logating, or any other unlawful game, out of *Christmas*, on pain of 20 s. and in *Christmas* to play at the said games only in their masters houses, or in their masters presence; and also no person shall at any time play at bowls in open places out of his garden or orchard, on pain of 6 s. 8 d. *Id. f. 16.*

But any master may license his servant to play at cards, dice, or tables with himself, or with any other gentleman openly in his house, or in his presence. *Id. f. 22.*

And any nobleman, or other person having 100 l. a year, may command or license his servants, or family of his house, to play within the precinct of his house, garden, or orchard, at cards, dice, tables, bowls, or tennis, as well amongst themselves, as others repairing to the same house. *Id. f. 23.*

And all justices of the peace, mayors, bailiffs, sheriffs, and other head officers, and every of them, finding or knowing any person using unlawful games, contrary to this act, may commit every

every such offender to ward, there to remain without bail or main-prise, till he be bound by obligation to the king's use, in such sum as by the discretion of the said justices or other such officers shall be thought reasonable, that they shall not from thenceforth use such unlawful games. *Id. f. 16.*

And by the 2 G. 2. c. 28. Where it shall be *proved on the oath of two witnesses* before any justice of the peace, as well as where he shall find upon his own view, that any person hath used any unlawful game contrary to the said statute, the said justice shall have power to commit him to prison without bail, unless and until he shall enter into recognizance, with sureties or without at the discretion of the justice, that he shall not from thenceforth play at or use such unlawful game. S. 9.

And where any the forfeitures abovementioned shall be found within the precincts of any leet, the lord shall have one half, and the other half shall be to him that shall sue in any of the king's courts: and elsewhere, they shall be half to the king, and half to him that shall sue in like manner. 33 H. 8. c. 9. f. 18.

But by the 31 El. c. 5. All suits to be pursued upon any statute (that is, any statute then in force) for using any unlawful game, shall be sued and prosecuted, or otherwise heard and determined, in the general quarter sessions or assizes of the county where the offence shall be committed, or in the leet within which it shall happen, and not in any wise out of the county. S. 7.

And no privilege of parliament shall be allowed to any person, against whom a prosecution shall be commenced, for keeping any common gaming house, or place for playing at any prohibited game. 18 G. 2. c. 34. f. 7.

4. By the 25 G. 2. c. 36. (which hath continuance for three years, &c.) any house, room, garden, or other place, kept for publick dancing, musick, or other entertainment of the like kind, in London, or within 20 miles thereof, without licence as hereafter following (except the theatres of *Drury-Lane*, *Covent-Garden*, the *Hay-Market*, and other entertainments exercised by Letters Patents or Licence of the Crown, or of the Lord Chamberlain) shall be deemed a disorderly house or place, and the keeper thereof shall forfeit 100 l. with full costs to him who shall sue (in six months) in any of the courts at *Westminster*. And the person who shall appear or act as master, or as having the management of such disorderly house, shall be deemed the keeper thereof.

Gaming house within London and 20 miles thereof.

Which said licence shall be granted at the last preceding *Michaelmas* sessions, and shall be signed and sealed by four justices in open court, and afterwards be publickly read by the clerk of the peace, with the names of the justices subscribing the same; and no licence shall be granted at any adjourned sessions; nor shall any fee be taken for the same. And there shall be inserted in such licence, and made conditions thereof, that the words following shall be affixed in large capital letters over the door or entrance of every such licensed house or place, *viz. Licensed pursuant to act of parliament of the twenty-fifth of king George the second*; and that it shall not be opened before 5 in the afternoon. And in case of a breach of either of the said conditions, the

licence shall be forfeited, and revoked by the justices at the next sessions, and shall not be renewed.

And to encourage prosecutions against persons keeping bawdy houses, gaming houses, or other disorderly houses, the constable, on notice given him in writing by any two inhabitants of the parish, paying scot and lot, of any person keeping such house, shall forthwith go with them to a justice of the peace; and shall (on their making oath that they believe the contents of such notice to be true, and entring into a recognizance of 20*l.* each to produce evidence of the offence,) enter into a recognizance of 30*l.* to prosecute with effect such person at the next sessions or assizes, as to the justice shall seem meet: and on the constable entring into such recognizance, the justice shall issue his warrant for bringing the accused persons before him, and shall bind them over to appear at the said sessions or assizes, and shall also, if he thinks fit, demand and take surety for their good behaviour in the mean time.

And if the constable shall neglect or refuse, upon such notice, to go before a justice, or to enter into recognizance, or shall be wilfully negligent in carrying on the prosecution, he shall forfeit 20*l.* to each of the said inhabitants.

And on trial, any person may give evidence against the defendant, notwithstanding his being a parishioner, or having entred into such recognizance.

And the constable shall be allowed all the reasonable expences of the prosecution, to be ascertained by two justices; and shall be paid the same by the overseers of the poor: and if such person be convicted, the overseers shall also forthwith pay 10*l.* to each of such inhabitants, on pain of forfeiting double to the said persons.

And no indictment of such offence shall be removed by *certiorari*.

Losing 10*l.* at a time.

5. By the 9 *An. c. 14.* Any person who shall at any time or sitting, by playing at cards, dice, tables, or other game whatsoever, or by betting on the sides of such as do play, lose to any one or more persons so playing or betting, in the whole the sum or value of 10*l.* and shall pay or deliver the same, or any part thereof; the person so losing and paying or delivering the same, shall be at liberty in three months to sue for and recover the same with costs, in any court of record: and if he shall not sue in three months, it shall be lawful for any person to sue for and recover the same and treble value, with costs; half to such person who shall sue, and half to the poor. *S. 2.*

And every person who shall so be liable to be sued for the same, shall be obliged and compellable to answer on oath such bill as shall be preferred against him, for discovering the sum of money or other thing so won. 9 *An. c. 14. s. 3.* 18 *G. 2. c. 34. s. 3.*

Losing 10*l.* at a time, or 20*l.* in 24 hours.

6. And by the 18 *G. 2. c. 34.* If any person shall win or lose at play, or by betting, at one time, the value of 10*l.* or within the space of 24 hours the value of 20*l.* he shall be liable to be indicted for such offence, in six months, either in the king's bench or at the assizes; and being convicted, shall be fined five times the value

value of the sum won or lost, which (after such charges as the court shall judge reasonable, allowed thereout to the prosecutor and evidence) shall go to the poor. S. 8.

And if any offender shall discover another offender, so that he be convicted, the discoverer shall be discharged from all penalties by reason of such offence, if not before convicted thereof, and shall be admitted as an evidence to prove the same. S. 9.

But nothing in this act shall repeal the aforesaid act of 9 *An. Id. f. 10.*

7. If any person shall play at cards, dice, tables, tennis, bowls, kittles, shovellboard, or any other pastime or game whatsoever (other than for ready money) or bet on the sides of such as shall play, and shall lose any sum or other thing, exceeding 100*l.* at any one time or meeting, upon ticket, or credit, or otherwise, and shall not pay down the same at the time when he shall lose the same; in such case he shall not be bound to make it good, but the contract for the same, and for every part thereof, and all assurances and securities for the same shall be void; and the winner shall forfeit treble value of all such sums as he shall so win above 100*l.* half to the king, and half to him that shall sue in one year in the courts at *Westminster*, with treble costs. 16 C. 2.

c. 7. f. 3.

8. And all notes, bills, bonds, judgments, mortgages, or other securities, where the whole or any part of the consideration shall be for money or any other valuable thing, won by playing at cards, dice, tables, tennis, bowls, or other game whatsoever; or by betting on the sides of such as do game; or for the reimbursing or repaying any money knowingly lent or advanced, at the time and place of such play, to any person so gaming or betting, or that shall (during such play) so play or bett,—shall be void: And where such securities shall be of lands, or such as incumber or affect the same; they shall enure and be to the sole use and benefit of, and devolve upon such person as might have such lands, in case the said grantor, or person so incumbering the same, had been dead: And all conveyances to hinder them from devolving on such person, shall be void. 9 *An. c. 14. f. 1.*

9. And any two justices may cause to come, or to be brought before them, every person whom they shall have just cause to suspect to have no visible estate, profession, or calling, to maintain themselves by, but do for the most part support themselves by gaming; and if such person shall not make it appear to the said justices, that the principal part of his expences is not maintained by gaming, they shall require of him sufficient securities for his good behaviour for 12 months, and in default of his finding such securities, shall commit him to the common gaol, until he shall find such securities as aforesaid. 9 *An. c. 14. f. 6.*

And if he shall, during the time for which he shall be bound, at any one time or sitting, play or bet for any sums or other thing exceeding in the whole the value of 20*s.* such playing shall be deemed a forfeiture of the recognizance. S. 7.

10. If any person shall by any fraud, unlawful device, or other ill practice in playing at cards, dice, tables, tennis, bowls, kittles, shovel

Losing above 100*l.* at a time.

Securities to be void.

Persons suspected of supporting themselves by gaming.

Cheating.

shovelboard ; or by cockfightings, horse races, dog matches, foot races, or other pastimes or games ; or by bearing a share in the stakes ; or by betting on the sides of such as shall play, act, ride, or run as aforesaid, —win any sum or other valuable thing ; he shall forfeit treble the value, half to the king, and half to the party grieved (if he shall sue in six months), otherwise to any person who shall sue in one year next after the said six months, in any of the courts at *Westminster*, with treble costs. 16 C. 2. c. 7. s. 2.

And by the 9 An. c. 14. If any person shall by any fraud or shift, couzenage, circumvention, deceit, or unlawful device, or ill practice whatsoever, in playing at cards, dice, tables, tennis, bowls, or any the games aforesaid, or bearing a share in the stakes, or betting on the sides of such as do play, win any sum of money or other valuable thing, and shall be convicted thereof upon indictment or information ; he shall forfeit five times the value of such money or other thing so won, and shall be deemed infamous and suffer such corporal punishment as in cases of wilful perjury ; and such penalty to be recovered by such person as shall sue for the same, by such action as aforesaid. S. 5.

Quarrelling.

11. And for the preventing such quarrels as may happen on the account of gaming ; if any person shall assault and beat, or challenge to fight, any other person whatsoever, on account of any money won by gaming, playing, or betting, at any the games aforesaid, he shall, on conviction thereof by indictment or information, forfeit to the king all his goods and chattels and personal estate whatsoever, and shall also suffer imprisonment without bail or mainprize, in the common gaol of the county where the conviction shall be had, during the term of two years. 9 An. c. 14. s. 8.

Royal palaces excepted.

12. It is generally provided by the several statutes, that nothing therein shall hinder any person from playing at any the games aforesaid, within any of the king's royal palaces, where he shall then reside.

Lottery, a nuisance.

13. By the 10 & 11 W. c. 17. All lotteries are declared to be publick nuisances ; and all grants, patents, and licences for such lotteries, to be against law. S. 1.

Keeping or playing at a lottery.

14. No person shall expose to be played, drawn, or thrown at, or shall play, draw, or throw at any lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatsoever : and every person who shall expose to be played, drawn, or thrown at, any such lottery, play, or device, shall forfeit 500 l. one third to the king, one third to the poor, and one third with double costs to him that shall sue in the courts at *Westminster* ; and the offenders shall likewise be prosecuted as common rogues, according to the statutes in that case made and provided. 10 & 11 W. c. 17. s. 2.

And every person who shall play, throw, or draw at any such lottery, play, or device, shall forfeit 20 l. in like manner. S. 3.

And all justices of the peace, mayors, constables, and other civil officers shall use their utmost endeavours to prevent the drawing of any such unlawful lottery, by all lawful ways and means ;
and

and every person who shall set up, or by writing or printing publish the setting up any such unlawful lottery, with intent to have such lottery drawn, shall forfeit 100*l.* one third to the king, one third to the poor, and one third with full costs to him who shall sue in the courts at *Westminster*. 9 *An. c. 6. f. 56.*

15. Every person who shall keep any office or place, for making insurances on marriages, births, christnings, or service, or any other office or place, under the denominations of sales of gloves, fans, cards, numbers, or the queen's picture, for the improvement of small sums of money, shall forfeit 500*l.* one third to the king, one third to the poor, and one third with full costs to him who shall sue. And every printer, or other person, who shall by writing or printing publish the setting up or keeping any such office or place, shall forfeit 100*l.* in like manner. 10 *An. c. 26. f. 109.*

16. Every person who shall keep any office or place, under the denomination of sales of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things, for the improvement of small sums of money; or shall sell or expose to sale the same or any of them, by way of lottery, or by lots, tickets, numbers, or figures; or shall make, print, advertise, or publish proposals or schemes for advancing small sums of money by several persons, amounting in the whole to large sums, to be divided among them by the chances of the prizes in some publick lottery; or shall deliver out tickets, to the persons advancing such sums, to intitle them to a share of the money so advanced, according to such proposals or schemes; or shall make, print, or publish, any proposal or scheme of the like nature, under any denomination whatsoever, — and shall be thereof convicted, on oath of one witness, by two justices where the offence shall be committed, or the offender shall be found, he shall, over and above any penalties by any former act made against private lotteries, forfeit 500*l.* one third to the king, one third to the informer, and one third to the poor, to be levied by distress and sale by warrant of such justices, and shall also by such justices be committed to the county gaol without bail for one whole year, and from thence till the said sum of 500*l.* shall be paid: Provided that persons aggrieved may appeal to the next quarter sessions. And every person who shall be adventurer in, or any way contribute on the account of any such sales, lotteries, proposals, or schemes, shall forfeit double the sum contributed, with costs, half to the king, and half to him that shall sue in the courts at *Westminster*. 8 *G. c. 2. f. 36, 37.*

And by the 12 *G. 2. c. 28.* If any person shall erect, set up, continue, or keep, any office or place, under the denomination of a sale of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things, by way of lottery, or by lots, tickets, numbers or figures, cards or dice; or shall make, print, advertise, or publish proposals or schemes for advancing small sums by several persons, amounting in the whole to large sums, to be divided among them by chances of the prizes in some publick lottery established by act of parliament, or shall deliver out

out tickets to the persons advancing such sums, to intitle them to a share of the money so advanced, according to such propofals or schemes; or shall expose to sale any houses, lands, advowsons, presentations to livings, plate, jewels, ships, or other goods, by any game, method, or device whatsoever, depending upon, or to be determined by any lot or drawing, whether it be out of a box or wheel, or by cards or dice, or by any machine, engine, or device of chance of any kind whatsoever; — he shall, on conviction before any justice of the peace (or mayor), on the oath of one witness, or view of such justice, or confession, forfeit 200 *l.* by distress and sale, by warrant of one justice of the county or town where the offence shall be committed; which said forfeiture (after deducting reasonable charges of the prosecution) shall go one third to the informer, and two thirds to the poor of the parish (except in *Bath*, where the said two thirds shall go to the poor of the hospital there). *S. 1.*

And if the offender shall not have sufficient goods, whereon to levy the penalties, or shall not immediately pay or give security for the same; the justice, before whom he shall be convicted, may commit him to the common gaol, not exceeding six months. *S. 8.*

And if any witness shall neglect or refuse to appear, upon summons, or shall refuse to give evidence, or give false evidence; he shall forfeit 50 *l.* by distress, by warrant of the person issuing such summons; and if he have not sufficient goods whereon to levy the 50 *l.* he shall be committed to the common gaol for 6 months. *18 G. 2. c. 34. s. 4.*

But if any person think himself aggrieved by the judgment of any justice or mayor, he may appeal to the next sessions, giving reasonable notice to the prosecutor, and entring into a recognizance before some justices of the peace where the conviction was made, with two sureties, on condition to try such appeal at such next sessions. And if the conviction shall be affirmed, the party appealing shall pay to the prosecutor treble costs. *12 G. 2. c. 28. s. 5.*

And no conviction shall be quashed by the sessions for want of form; nor shall be removed by *certiorari*, till after determination in the sessions. *Id. s. 6.*

And if any justice, or mayor, shall neglect his duty herein; he shall forfeit 10 *l.* with full costs, half to him that shall sue in any court of record or at the assizes, and half to the poor. *Id. s. 9.*

Moreover, every such sale of houses, lands, advowsons, presentations, plate, jewels, ships, goods, or other things, by any game, lottery, machine, engine, or other device, depending upon any chance or lot, shall be void; and the same being exposed to sale in manner aforesaid, shall be forfeited to such person as shall sue for the same in any court of record, or at the assizes. *Id. s. 4.*

And, finally, every person who shall be an adventurer in any of the said games, lotteries, or sales, shall forfeit 50 *l.* in like manner. *Id. s. 3.*

17. The games of ace of hearts, faro, basset, and hazard, shall be deemed games or lotteries by cards or dice; and every person who shall set up, or keep these games, shall be liable to all the abovementioned penalties, for setting up or keeping any the games or lotteries in this act mentioned. 12 G. 2. c. 28. s. 2.

Ace of hearts,
faro, basset, and
hazard.

And every person who shall play, set at, stake, or punt at any of the said games, shall forfeit 50*l.* in like manner. S. 3.

18. Also the game of passage, and every other game with one or more die or dice, or with any other instrument, engine, or device in the nature of dice, having one or more figures or numbers thereon (back-gammon, and the other games played with the back-gammon tables, only excepted) shall be deemed games or lotteries by dice, within the said act of 12 G. 2. c. 28.—13 G. 2. c. 19. s. 9.

Passage.

19. Also by the 18 G. 2. c. 34. No person shall keep any house, room, or place for playing, or suffer any person within such place, to play at roly poly, or any other game with cards or dice already prohibited by the laws of this realm; and if any person shall keep such house, or suffer any person to play at roly poly, or other game with cards or dice prohibited by law, he shall be liable to the penalties and prosecution as by the said act of the 12 G. 2. c. 28.—18 G. 2. c. 34. s. 1.

Roly poly.

And if any person shall play at roly poly, or any game with cards or dice prohibited by law; he shall be liable to the penalties and prosecution, as by the said act of the 12 G. 2.—18 G. 2. c. 34. s. 2.

20. If any person shall, by colour of any grant from any foreign prince or state, set up any lottery, or undertaking in the nature of a lottery, under any denomination whatsoever; or shall make, print, or publish any proposal for any such lottery or undertaking; or shall sell or dispose of any ticket in any foreign lottery; and shall be convicted thereof, on oath of one witness, before two judges where the offence shall be committed, or the offender shall be found, he shall, over and above any penalties by former acts against unlawful lotteries, forfeit 200*l.* one third to the king, one third to the informer, and one third to the poor, to be levied by distress by warrant of such justices; and shall also by them be committed to the common gaol for one year, and from thence till the said sum of 200*l.* be paid: provided, that persons aggrieved may appeal to the next quarter sessions. 9 G. c. 19. s. 4. 5.

Foreign lotteries.

And by the 6 G. 2. c. 35. If any person shall sell, procure, or deliver any ticket, receipt, chance, or number in any foreign or pretended foreign lottery, or in any class, part, or division thereof, or in any undertaking in the nature of a lottery; or shall sell, procure, or deliver any ticket, receipt, chance, or number in any duplicate or pretended duplicate of any foreign or pretended foreign lottery; or shall receive any money for any such ticket, receipt, chance, or number, or in consideration of any money to be repaid in case any ticket or number in any foreign or pretended foreign lottery, or any class, part, or division thereof, shall prove fortunate; and shall be convicted thereof in the courts at Westminster,

Gaol and gaoler.

minster, or on the oath of one witness before two justices where the offence shall be committed, or the offender shall be found; he shall forfeit 200*l.* one third to the king, one third to the informer, and one third to the poor; The same (in case of conviction before the justices) to be levied by distress by warrant of such justices; and shall also be committed to the common gaol for a year, and from thence till the 200*l.* be paid: provided, that persons aggrieved may appeal to the next quarter sessions. *S.* 29, 30.

How far an offender may be a witness.

21. No person, other than the plaintiff and defendant, shall be incapacitated from being a witness, touching any offence against the laws for preventing excessive and deceitful gaming, by reason of having played, betted, or staked at any prohibited game. 18 G. 2. c. 34. *s.* 5.

Gaol and Gaoler.

For breaking of gaol, see *Prison breaking*.

- I. Building and repairing of gaols.*
- II. Who shall have the keeping of gaols.*
- III. Gaoler shall receive criminals.*
- IV. How they shall be maintained.*
- V. Spirituous liquors not to be sold in gaols.*
- VI. How prisoners may be set on work.*
- VII. How they shall be restrained and kept.*
- VIII. How they shall be delivered.*
- IX. Of gaolers permitting escapes.*
- X. Concerning debtors.*
- XI. Concerning the prisons of the King's bench and Marshalsea.*

I. Building and repairing of gaols.

THE justices, or the greater number of them, within the limits of their commission, upon presentment of the grand jury at the assizes (or sessions, 12 G. 2. c. 29. *s.* 13.) of the insufficiency or inconveniency of the county gaol, may contract with any person for the building, finishing, or repairing the same. 11 & 12 W. c. 19. *s.* 1, 2. The expence thereof to be paid by the treasurer, out of the general county rate. 12 G. 2. c. 29.

But this shall not extend to gaols held by inheritance; nor to charge any persons in any town or liberty which have common gaols for felons, and commissioners of assize or gaol delivery, for any

any assessment to the making the common gaol for the shire.
11 & 12 W. c. 19. s. 5.

II. Who shall have the keeping of gaols.

The gaol it self is the king's, but the keeping thereof is incident to the office of the sheriff, and inseparable from it; except such gaols whereof any persons have the keeping by inheritance or succession. 14 Ed. 3. st. 1. c. 10. 19 H. 7. c. 10. 2 Inst. 589.

And therefore the sheriffs shall put in such keepers for whom they will answer. 14 Ed. 3. st. 1. c. 10.

But by the 3 G. c. 15. s. 10. None shall buy the office of gaoler, on pain of 500*l.* half to the king, and half to him that shall sue.

And a gaoler in fact, is as much punishable for a misdemeanor in his office, as if he were a rightful gaoler. 2 Haw. 134.

III. Gaoler shall receive criminals.

All felons shall be imprisoned in the common gaol, and not elsewhere. 5 H. 4. c. 10.

And if the gaoler refuses to receive a felon, or take any thing for receiving him, he shall be punished for the same by the justices of gaol delivery. 4 Ed. 3. c. 10. Dalt. c. 170.

But vagrants and other criminals, offenders, and persons charged with small offences, may for such offences, or for want of sureties, be committed either to the common gaol, or house of correction, as the justices in their judgment shall think proper. 6 G. c. 19.

IV. How they shall be maintained.

The gaoler cannot refuse the prisoner victuals, for he ought not to suffer him to die for want of sustenance. 1 Inst. 295.

Which shall be provided for, by a sum to be paid out of the general county rate, by the high constables, to such sufficient persons dwelling nigh the gaols, as shall be appointed by the justices in open sessions, who shall be there ready to receive it. 14 El. c. 5. 12 G. 2. c. 29.

V. Spirituous liquors not to be sold in gaols.

By the 24 G. 2. c. 40. No licence shall be granted for retailing spirituous liquors within any gaol or prison; and if the gaoler shall sell, lend, use, or give away, or suffer the same (except by way of medicine) he shall forfeit 100*l.* half to the king, and half with full costs to him who shall sue. S. 17.

And any justice, on information on oath, that spirituous liquors are kept or disposed of in such gaol, may enter and search, or issue his warrant to search for, and seize, and stave, and destroy the same. S. 18.

And

Gaol and gaoler.

And if any person shall endeavour to bring any spirituous liquors into such gaol, the gaoler or his servants may apprehend and carry him before a justice; and if by the oath of one witness or otherwise such person shall be convicted, he shall be committed to prison or to the house of correction, not exceeding 3 months, unless he shall immediately pay down such fine, not exceeding 20*l.* and not less than 10*l.* as the justice shall impose, to be paid half to the informer, and half to the poor of such gaol. S. 19.

And a copy of the three clauses above, shall be hung up in each gaol, on pain of the gaoler forfeiting 40*s.* to be levied by warrant of one justice, on conviction on the oath of one witness: and any justice may enter and demand a sight of such copy, and if not shewn to him, he shall immediately convict such gaoler; one half of the said penalty to be to the informer, and the other (or the whole if there be no informer) to the poor of such gaol. S. 20.

VI. How prisoners may be set on work.

The justices in their general sessions, if they find it needful, may provide a stock of such materials as they find convenient, for the setting poor prisoners on work, to be paid for by the treasurer out of the general county rate; and may pay and provide fit persons to oversee and set such prisoners on work; and make such orders for accounts concerning the premises, as shall be thought needful, and for punishment of neglects and other abuses, and for bestowing the profits arising by the labour of the prisoners for their relief. Provided that the sum to be so paid do not exceed the rate of 6*d.* a week for any one parish. 19 C. 2. c. 4. s. 1. 12 G. 2. c. 29.

VII. How they shall be restrained and kept.

If any person shall be committed to any prison, for any criminal or supposed criminal offence, he shall not be removed from thence, unless it be by *habeas corpus* or some other legal writ; or where he is removed from one prison or place to another, within the same county, in order to his trial or discharge; or in case of sudden fire or infection, or other necessity: on pain that the person signing any warrant for such removal, and the person executing the same, shall forfeit for the first offence 100*l.* and for the second 200*l.* to the party grieved. 31 C. 2. c. 2. s. 9.

But on emergent occasions, as in case of infectious diseases, the sheriff or gaoler, with the advice and consent of 3 or more justices (1 Q.) may, if they shall find it needful, provide other safe places (with the owners consent) for the removal of sick or other persons out of the usual gaols. 19 C. 2. c. 4. s. 2.

It seemeth generally in all cases where a man is committed to prison, especially if it be for felony, or upon an execution, or but for a trespass or other offence, every gaoler ought to keep such prisoner in safe and close custody; safe, that he cannot escape; and

and close, without conference with others or intelligence of things abroad. *Dalt. c. 170.*

And therefore if the gaoler shall license his prisoner to go abroad for a time, and then to come again, or to go abroad with a keeper, tho' he come again, yet these are escapes. *Dalt. c. 170.*

And hereupon it is lawful for the gaoler to hamper a felon with irons to prevent his escape. *1 H. H. 601. Dalt. c. 170.*

But the learned editor of *Hale's History* observes, that this liberty can only be intended, where the officer has just reason to fear an escape; as where the prisoner is unruly, or makes any attempt to that purpose; but otherwise, notwithstanding the common practice of gaolers, it seems altogether unwarrantable, and contrary to the mildness and humanity of the laws of *England*, by which gaolers are forbidden to put their prisoners to any pain or torment. And Lord *Coke*, *2 Inst. 381.* is express, that by the common law it might not be done. *1 H. H. 601.*

And if the gaoler keep the prisoner more straitly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler by the common law: and this is the cause, that if a prisoner die in gaol, the coroner ought to sit upon him. *3 Inst. 91.*

But if a criminal, endeavouring to break the gaol, assault his gaoler, he may be lawfully killed by him in the affray. *1 Harw. 71. 1 H. H. 496.*

VIII. How they shall be delivered.

By the *3 H. 7. c. 3.* Those that have the custody of gaols, must certify the names of all prisoners, to the justices of gaol delivery, in order to their trial or discharge; on pain of *5 l.*

And if a gaoler detains a prisoner in gaol after his acquittal, unless it be for his fees (not for meat, drink, or lodging) this is an unlawful imprisonment. *2 Inst. 53.*

And the gaoler must not disobey a writ of *habeas corpus*, for want of his fees; but the court will not turn the prisoner over, till the gaoler be paid all his fees. *2 Harw. 151.*

IX. Of gaolers permitting escapes.

If the gaoler voluntarily suffer a prisoner to escape, he shall be punished in the same manner as the prisoner ought to have been who escaped: and if he negligently permit him to escape, he shall be punished by fine and imprisonment. And the sheriff shall answer for him. *2 Harw. 134, 5, 6.*

But the principal gaoler is only finable for the voluntary escape of a felon suffered by his deputy; for no one shall suffer capitally for any crime, but he who is actually guilty of it. *2 Harw. 135.*

But for a negligent escape suffered by his bailiff, the sheriff is as much liable to answer, as if he had actually suffered it himself; and the court may charge either the sheriff or bailiff for it: And if a deputy gaoler be not sufficient to answer a negligent escape, his principal must answer for him. *2 Harw. 135.*

X. Concerning

X. Concerning debtors.

By an act in the 22 & 23 C. 2. c. 20. certain regulations are made, in relation to poor prisoners for debt, which are enforced and enlarged, and (in effect) superseded, by the 2 G. 2. c. 22. and therefore the act of the 22 & 23 C. 2. is only mentioned here, because if this latter act, which is but temporary, shall be permitted to expire, the said regulations will fall back upon the aforesaid statute of C. 2.

Which said act of the 2 G. 2. (which by the 21 G. 2. c. 33. is continued to *Jun. 1. 1754, &c.*) enacteth as follows:

No sheriff, bailiff, or other officer, shall carry any person being in his custody by any writ, process, or warrant, to any tavern, alehouse, victualling house, or to the private house of such officer, or of any of his relations or tenants, without his consent; nor charge him for any wine, beer, ale, victual, tobacco, or any thing else, but what he shall freely call for; nor shall demand more than by law is allowed for such arrest, or waiting till the prisoner have given appearance or bail, or agreed with the party, or be sent to gaol; nor take any thing for keeping him out of gaol; nor shall carry him to gaol within 24 hours after the arrest; nor shall take more for a day's diet, or night's lodging, or other expences, than what shall be allowed by order of sessions, who are to make standing rules or orders for ascertaining such expences.

S. 1.

(But by the 3 G. 2. c. 27. s. 6. which act hath the same continuance; If any person arrested shall refuse to be carried to some safe and convenient dwelling house of his own naming, so as it be in a market town (if he is there arrested), or within 3 miles of the place of arrest, not being his own house, nor out of the liberty, he may be carried to gaol within the 24 hours.)

And the sheriff shall deliver a printed copy of the above clause to every bailiff; and when the bailiff shall give security upon his entering into his office; shall make it part of the condition of such security, that he will shew and deliver a copy of the said clause to every person whom he shall arrest and carry to any such house, and permit him to read the same before any liquor or meat shall be called for; on pain of being punished as for a misdemeanor.

S. 2.

And the gaoler shall suffer any prisoner to send for any victuals or other necessaries, and to have such bedding, linen, or other things, as he shall think fit.

S. 3.

And the gaoler shall take no fees for commitment, chamber rent, or discharge, but what are now allowed by law, until such fees shall be settled by the justices in sessions. And tables shall be made of the fees when so settled, and shall be signed by 3 or more justices attending the settling, and shall be reviewed and confirmed, or moderated, and then signed by the judges of assize, or one of them, together with 3 or more justices of the county. And also rules and orders for the better government of prisons, shall be made, and from time to time enlarged, enforced, or altered

altered as occasion shall require, by the judges of assize or one of them, and 3 or more justices under their hands. And duplicates of such tables of fees and rules, shall be inrolled by the clerk of the peace without fee, and shall be hung up and remain in every gaol.

And after such table of fees settled and confirmed, no gaoler shall demand of any prisoner for debt, any greater fee than is therein allowed. (Regulations in *London, Middlesex, and Surrey*, to be made by the two chief justices, and chief baron, and the justices of the peace.) S. 4.

And on the petition of any prisoner complaining of any exaction or extortion, or other abuse, by any gaoler or bailiff, to any of the judges or justices of assize, they may determine the same in a summary way, with full costs. S. 5.

And the justices of the peace shall do their best endeavours, to discover charities given for the use of prisoners, and may send for writings, and examine persons on oath, and order the same according to the intent of the donors: And lists of such charities shall be hung up in the gaol, and be registred by the clerk of the peace. S. 6.

And if any sheriff, bailiff, gaoler, or other officer, shall offend against this act, he shall (over and above the penalties by former laws) forfeit to the party grieved 50 *l.* with treble costs. S. 14.

The county gaol is the prison for malefactors; but prisoners for debt, where escape lies against the sheriff for their escaping, may be kept in what place the sheriff pleases. *L. Raym.* 136.

But he shall not put, keep, or lodge prisoners for debt and felons together in one room or chamber; but they shall be put, kept, and lodged separate and apart from one another in distinct rooms; on pain of forfeiting his office, and treble damages to the party grieved. 22 & 23 G. 2. c. 20. s. 13.

But it is said, that a gaoler is no way punishable for keeping a debtor in irons. 2 *Harv.* 152. But it seemeth that this must at least be understood with the qualification abovementioned.

XI. Concerning the prisons of the king's bench and marshalsea.

The justices in *Easter* sessions shall set down what sums shall be sent out of every county or place corporate, for the relief of the poor prisoners of the *king's bench* and *marshalsea*, so as there be sent out of every county yearly 20 *s.* at the least to each of the said prisons; to be paid by the high constables out of the general county rate, to two such treasurers, or one of them, as by the more part of the justices of the county shall be elected to be treasurers: which treasurers, on the first day of *Trinity* term yearly, shall pay over the same to the lord chief justice of *England*, and knight marshal, or to whom they shall appoint, taking their acquittance for the same, or in default of the chief justice, to the next most antient justice of the *king's bench*, equally to be

divided between the prisoners of the *king's bench* and *marshalsea* prisons. 43 *El.* c. 2. f. 12, 13, 14. 11 *G.* 2. c. 20. f. 1. 12 *G.* 2. c. 29.

And if the treasurer shall neglect or refuse, the king's bench may make a rule on him, requiring him to pay the same; and obedience to such rule may be enforced as other rules of the said court, at the cost and charges of the treasurer. 11 *G.* 2. c. 20. f. 2, 4.

And that the treasurer may be the better amenable to the said court, he shall within 30 days after his election or appointment, under the like penalty, transmit his name and place of abode to the clerk of the crown in the king's bench, to be entered by him; for which entry no fee shall be paid. S. 3.

Gauger. See Exercise.

Gin. See Exercise.

Glass. See Exercise.

Good behaviour. See Surety.

Grand larceny. See Larceny.

Greyhound. See Game.

Gunpowder.

Who may make gunpowder. 1. **B**Y an act made in the 16 C. 1. c. 21. (to wit, in 1640, being the last statute of force in that king's reign) All subjects may make and sell gunpowder, and bring into the kingdom salt petre, brimstone, or any other materials for the making of it.

And by a statute made in the first year of the reign of king *James* the 2d, (which is also somewhat remarkable) it is enacted, that if any person shall obtain a grant for the sole making or importing of gunpowder, he shall incur a *præmunire*. 1 J. 2. c. 8. f. 3.

Shipping or landing of gunpowder, or firing of guns on the Thames above Blackwall. 2. By the 5 G. 2. c. 20. No master of any vessel outward bound, shall receive on board any gunpowder, either as merchandize or store for the voyage (except for his majesty's service) on the *Thames* above *Blackwall*; on pain of 5 *l.* for every 50 *lb.* weight, and so in proportion. S. 2.

And the master of every vessel coming into the *Thames*, shall land all the powder on board, either before arrival at *Blackwall*, or within 24 hours (if the weather will permit) after he comes to anchor there, or at the place of unloading; on pain of 5 *l.* for every 100 *lb.* weight. S. 3.

And if any officer of any ship (except the king's) shall, between *London bridge* and *Blackwall*, keep any gun loaded with ball, or fire any gun on board above *Blackwall*, before sunrise or after sunset; he shall forfeit for such gun loaded 5 *s.* and for such gun fired 10 *s.* S. 4.

And

And the corporation of *Trinity house* at *Debitford strand*, may appoint a person to inspect vessels; and if any such officer obstruct him, he shall forfeit 5 *l.* S. 5.

And the said penalties shall go to the poor of the corporation. S. 6.

And two justices of *London*, or the respective counties where the offence shall be committed, shall on complaint in ten days summon the offender, or after oath made of the offence may issue their warrant for apprehending him, and on appearance or contempt may convict him either by oath of witnesses, or confession, or his own view, and levy the penalty by distress, and if not redeemed in five days, by sale; for want of distress, he shall be imprisoned for 3 months, or till paid: and persons aggrieved may appeal to the next sessions. S. 7.

3. No person, not being a dealer in gunpowder, shall keep more than 50 *lb.* or being a dealer, not more than 200 *lb.* longer than 24 hours, at any time in any house or place, or in any houses or other places, either under the same roof, or by dividing the same, and disposing thereof under different roofs, or in any yard or yards, within *London* and *Westminster*, or the suburbs thereof, or within 3 miles of the tower, or of *St. James's*; or within two miles of any magazine now erected (that is, in the year 1718,) for keeping gunpowder, belonging to the king for the use of the publick; or on the *Thames*, except in vessels passing or detained by tides or bad weather (except carts and other carriages loading or unloading, or passing on the highway:) on pain of forfeiting the same, and the value thereof, with full costs, to him who shall sue in any court of record at *Westminster* in 30 days. 5 G. c. 26. s. 1. 11 G. c. 23. s. 1. 15 & 16 G. 2. c. 32. s. 1.

Keeping gunpowder in London.

And any justice of the peace within the said limits, on demand by any inhabitants shewing a reasonable cause, may issue his warrant to search in the day time, for dangerous quantities of gunpowder, and break open any places if there be occasion, and the searchers may seize, and may remove the same in 12 hours out of the said limits, and detain the same till it be determined in the courts whether it be forfeited or not. 15 & 16 G. 2. c. 32. s. 2.

4. And persons permitting others to keep gunpowder, in any places not belonging to the owners of such gunpowder, shall forfeit 1 *s.* a pound. 15 & 16 G. 2. c. 32. s. 3.

Persons permitting others to keep it.

5. No person shall carry in the streets of *London* or *Westminster*, or the suburbs thereof, more than 20 hundred weight of gunpowder at one time; and all gunpowder carried in the said streets in any carts or carriages, shall be carried in covered carts or carriages, and the barrels close jointed and hooped, and put into cases of leather or canvass; and gunpowder carried by man or horse, shall be put into cases of leather or canvass, and entirely covered therewith: and if any shall be carried otherwise, it shall be forfeited, and may be seized by any person to his own use, the offender being thereof convicted before two Justices. 5 G. c. 26. s. 4.

Carrying gunpowder in the streets of London.

Keeping gun-
powder else-
where.

6. By the 22 G. 2. c. 38. No person shall keep gunpowder for more than 24 hours at any one time, in greater quantity than 400 lb. weight, in any house or other place, in any city or the suburbs thereof, or in any market town, or within 100 yards thereof, or within two miles of any of the king's palaces, or one mile of any the king's magazines; nor shall keep for more than 24 hours at any time, a greater quantity than 3000 lb. weight in any house or other place. 22 G. 2. c. 38. f. 1.

And any two justices, on demand made, and a reasonable cause assigned, by any parish officer or two householders inhabiting where it is kept, shall issue their warrant for searching in the day time any house, shop, or other place, and breaking open the doors thereof, if there be occasion; and if upon such search, more than 400 lb. weight, or 3000 lb. weight respectively as above shall be found, all exceeding the said quantities shall be seized, and detained, and forfeited to any person who shall sue in 3 months in any court at *Westminster*; which court shall give judgment for recovery of the same or the value thereof with full costs. S. 2

But no penalty shall be incurred on account of a greater quantity than 30 hundred weight kept within any warehouse or magazine already built for that purpose (that is, in 1749,) unless the justices at their quarter sessions shall on complaint by two inhabitants near, adjudge the same to be dangerous, and until 6 months after such adjudication; and provided the same be not situate in any city or the suburbs thereof, or in any market town, or within 100 yards thereof, or within 2 miles of any of the king's palaces, or one mile of any of the king's magazines. S. 7.

Erecting powder
mills, a nuisance.

7. And it seems that erecting powder mills, or keeping powder magazines near a town, is a nuisance, for which an indictment or information will lie. For in the case of *K. and Williams, E. 12 W.* there was an indictment against *Roger Williams*, for keeping 400 barrels of powder near the town of *Bradford*, and he was convicted accordingly. And in *K. and Taylor, E. 15 G. 2.* Information was granted against the defendant, for erecting powder mills and magazines near *Malden* in *Surrey*. Nelf. Gunp.

Which seemeth reasonable enough; since the keeping such quantities of gunpowder in such places, may endanger the lives of the king's subjects.

Carrying gun-
powder else-
where than in
London.

8. No person shall convey at any one time, in any waggon or other carriage, a greater quantity than 2500 pounds weight; or more than 5000 pounds weight in any open vessel on any river, within one mile of any city or market town: And all such gunpowder shall be carried in covered carts and carriages; and the barrels shall be close joined and hooped, and secured that no part thereof be scattered in the passage; on pain of being seized and forfeited to the informer, on proof of the offence before two justices. 22 G. 2. c. 38. f. 3.

Exception.

9. But none of the said acts shall extend to any magazine belonging to the crown; or to hinder the trying of gunpowder by his majesty's officers; or to the carrying of gunpowder to and from the king's magazines; or with forces in their march.

5 G. c. 26. f. 5. 11 G. c. 23. f. 4. 15 & 16 G. 2. c. 32. f. 6.
22 G. 2. c. 38. f. 5.

10. The justices in sessions shall, on application to them made, appoint convenient plots of ground, two miles distant from any city or market town, not exceeding two acres, with the use of convenient roads leading thereto, for erecting warehouses for keeping gunpowder in any quantity, first agreeing with the proprietor; and if they cannot agree, the said justices shall issue their warrant to the sheriff to impanel and return a jury, who shall on oath (to be administered by the said justices) inquire into the value of the ground, with the use of convenient roads leading thereto: And all such verdicts and inquisitions shall be kept with the records of the sessions, and be conclusive to all parties: And the said justices may send for persons interested, and examine the parties and witnesses on oath: And the sum to be assessed as aforesaid, not exceeding 30 years purchase, shall be paid to the proprietor; and on such payment, or in case of refusal to accept it, on leaving it with the said justices for the proprietor, the inheritance of the grounds, and use of the roads leading thereto, shall be vested in the purchasers and their assigns, for the purposes aforesaid, and not otherwise; And the warehouses to be built thereon, shall be built in such manner, as will most effectually render them safe and secure. 22 G. 2. c. 38. f. 6.

Sessions to appoint places for warehouses.

11. If any person shall work with any iron hammer, or hammer plated with iron or steel, in any warehouse or place while any gunpowder is there; he shall on conviction within one month, by the oath of one witness, before one justice, forfeit 20s. to the informer; to be levied by distress by warrant of such justice; for want of sufficient distress, to be committed to the house of correction, to be kept to hard labour not exceeding one month, nor less than 14 days. 11 G. c. 23. f. 3.

Working with hammers in warehouses.

12. Every person employed in any storehouse where gunpowder is kept, or in carrying gunpowder from one place to another, being convicted before one justice, of wilfully committing any act, whereby such gunpowder may be in danger of taking fire, shall forfeit 5 l. to the informer, for every 100 pounds weight of gunpowder contained in such storehouse, or which he shall be employed in conveying; and on non-payment thereof, shall be committed to the publick gaol, without bail, not exceeding six months. 22 G. 2. c. 38. f. 4.

Doing any thing to indanger the firing it.

Guns. See Game.

Habeas corpus. See **Bail.**

Hackney coaches and chairs.

For the duty on coaches, see title **Excise.**

- Commissioners.** 1. **T**HE king may appoint persons not exceeding five, to be commissioners for regulating hackney coaches within the bills of mortality. *9 An. c. 23. f. 1.*
- Licensing.** 2. Which commissioners shall under hand and seal license hackney coaches within the bills, not exceeding 800; and on every licence shall be reserved 5*s.* a week, to be paid monthly. *9 An. c. 23. f. 2.*
- And they shall also license hackney chairs within the bills aforesaid, not exceeding 400; reserving a rent of 10*s.* a year, to be paid quarterly. *9 An. c. 23. f. 3. 10 An. c. 19. f. 158. 12 G. c. 12. f. 15.*
- Mark.** 3. Every coach and chair shall have a distinct mark on each side; and if any shall alter such mark, he shall forfeit 5*l.* half to the informer, and half to the king. *9 An. c. 23. f. 4.*
- Size of the horses.** 4. No horse to be used with any hackney coach, shall be under 14 hands high. *9 An. c. 23. f. 4.*
- Penalty of driving without licence.** 5. No person shall drive or let to hire any hackney coach without licence; on pain of 5*l.* nor shall carry any person for hire in a hackney chair, without licence; on pain of 40*s.* in like manner. *9 An. c. 23. f. 4.*
- And by the 1 G. *st.* 2. c. 57. No unlicensed person shall ply with any coach or hearse, or shall let to hire any mourning coach, within the bills aforesaid, on pain of 5*l.* as for driving unlicensed. *S. 3.*
- And if any person shall drive a mourning coach to a funeral, not having a number on it, or except it be a coach attending the master or some of his family; on information given to the commissioners, they may summon the driver, and unless he prove an order from the master to attend at the funeral, the driver or the undertaker shall forfeit 5*l.* *S. 4.*
- Rates.** 6. And the coachman shall not take above the rate of 10*s.* a day, reckoning 12 hours to the day; and by the hour, not above 18*d.* for the first hour, and 12*d.* for every hour after: And no person shall pay from any of the inns of court or thereabouts to any part of St. James's or the city of Westminster (except beyond Tuttle-street) above 12*d.* and the same prices from the same places to the inns of court or thereabouts; and from the inns of court or thereabouts, to the Royal Exchange 12*d.* and if to the Tower, or Bishopgate-street, or Aldgate, or thereabouts 18*d.* and so from the said places to the said inns of court as aforesaid: and the like rates from and to any place, at the like distance, within the places before mentioned. *9 An. c. 23. f. 6.*

And

And no person shall be obliged to pay above 12*d.* for a coach for any distance (not above specified) not exceeding one mile and four furlongs; nor above 1*s.* 6*d.* for any distance above a mile and four furlongs, and not exceeding two miles: And no chairman shall take more than the rate for any hackney coach driven two thirds of the same distance; on pain of 40*s.* S. 7, 8.

7. And the commissioners may make by-laws, to bind all persons licensed, and the renters of such licences, and the drivers. By-laws.

9 *An. c. 23. f. 16.* 1 *G. ff. 2. c. 57. f. 1.*

The same to be approved by the lord chancellor, commissioners of the great seal, two chief justices, and chief baron, or three of them. 9 *An. c. 23. f. 17.*

8. And if any hackney coachman shall refuse to go at, or exact more for his hire, than according to the above act, or by-laws; he shall forfeit a sum not exceeding 3*l.* nor under 10*s.* 1 *G. ff. 2. c. 57. f. 2.* Driver exacting.

9. And if any person who shall drive a coach, or carry a chair for hire, acting under a person licensed, shall be guilty of misbehaviour, by demanding more than his fare, or giving abusive language, or other rude behaviour; he shall, on conviction on oath, forfeit not exceeding 20*s.* to the poor; and if he shall not be able, or refuse to pay, he shall be committed to *Bridewell* or some other house of correction, to be kept to hard labour seven days, and receive the publick correction of the house before he be discharged. 9 *An. c. 23. f. 49.* Misbehaving.

And on misbehaviour of a coachman by abusive language, or otherwise, the commissioners may revoke his licence. S. 19.

10. And if any person shall refuse to pay, or shall deface any coach or chair, any justice may grant his warrant to bring him before him; and on proof upon oath may award satisfaction to the party, and on refusal to pay, may bind him over to the next sessions, who may determine the same. 9 *An. c. 23. f. 22.* Person refusing to pay.

11. The rents and penalties to be levied by distress, by warrant of three commissioners; which distress shall be sold in ten days, returning the overplus, charges of the distress and of the warrant being first deducted (if on seven days notice they pay not the fine without such warrant); and in default of distress, to be imprisoned till paid: and if any rent shall be unpaid for 14 days, the commissioners may withdraw the licence. 9 *An. c. 23. f. 12.* Power of the justices.

And moreover, the breach of the by-laws, and of these rules and orders, may be punished by any justice of the peace, mayor, or bailiff, where the offence shall be committed, in like manner as by the commissioners. 9 *An. c. 23. f. 17.* 1 *G. ff. 2. c. 57. f. 7.*

Note; The clause in the act of the 12 *G. c. 12.* abovementioned, was only to continue for 18 years; but by the 16 *G. 2. c. 26.* it is continued to June 24. 1760, &c.

In which said act of the 16 *G. 2.* there seems to be a mistake, which hath unsettled all the other acts abovementioned. For whereas the 9 *An. c. 23.* so far as it relates to this subject, was to continue for 32 years, and afterwards by the 3 *G. c. 7. f. 1.* was made perpetual; and the said act of the 10 *An. c. 19.* so far as

it relates to this subject, was to continue for 31 years, and afterwards by the said act of the 3 G. c. 7. s. 1. was also made perpetual; and the said act of the 1 G. s. 2. c. 57. which explains and amends the 9 An. c. 23. doth consequently attend the fate of the same act of the 9 An. Now this act of the 16 G. 2. recites them all three as temporary only, and continues them along with the said act of the 12 G. to June 24. 1760, &c. By which it may seem, that they will expire at that time, if they shall not be farther continued; or if that mistake shall not in the mean time be rectified.

Hares. See Game.

Harepipes. See Game.

Harvest. See Game.

Hawkers and pedlars.

Licence duty.

1. **T**HERE shall be paid by every hawker, pedlar, petty chapman, or any other trading person going from town to town, or to other mens houses, and travelling either on foot, or with horse, horses, or otherwise (except as herein after excepted), carrying to sell, or exposing to sale any goods, wares, or merchandizes, a duty of 4 *l.* a year. And every person so travelling with a horse, ass, mule, or other beast bearing or drawing burden, shall pay 4 *l.* a year for each horse or beast, over and above the other 4 *l.* 9 & 10 W. c. 27. s. 1.

Payment of the duty.

2. And every such person, on receiving his licence, shall pay to whom the commissioners of the treasury, or three of them, shall appoint for licensers, or their deputy, half the duty, and give security by bond, with one or more sureties, to the king, for payment of the other half at the end of six kalendar months, unless he shall chuse to pay down the other half, in which case he shall be allowed after 2 *s.* in the pound for prompt payment. 9 & 10 W. c. 27. s. 2.

Granting the licence.

3. And the commissioners for these duties, or two of them, shall (on the receipt and security given as aforesaid) grant licences to be by them subscribed; for which shall be taken only 1 *s.* unless such person travel with a horse or beast, and in that case shall be paid only 2 *s.* above the duties. 9 & 10 W. c. 27. s. 4.

Trading without a licence, or refusing to shew it.

4. And if any such person be found trading as aforesaid, without, or contrary to such licence; or if on demand made by any justice of the peace, mayor, constable, or other peace officer of any town corporate or borough, where he shall so trade, shall not have his licence ready to be produced; he shall forfeit 12 *l.* half to the informer, and half to the poor of the parish wherein the offender shall be discovered; and for non payment thereof, shall suffer as a common vagrant, and be committed to the house of correction. 9 & 10 W. c. 27. s. 3. 3 & 4 An. c. 4. s. 4.

And

And if any constable or other officer aforesaid, shall refuse or neglect, upon due notice, or his own view, to be aiding in the execution hereof, being thereunto required, and be thereof convicted on oath of one witness before one justice where the offence shall be committed; he shall forfeit 40*s.* by distress and sale by warrant of such justice, half to the poor, and half to the prosecutor. 9 & 10 *W. c. 27. f. 7.*

And any person may seize and detain any such hawker, pedlar, petty chapman, or other trading person, till he produce his licence if he have any, or if he be found trading without a licence, for such reasonable time as he may give notice to the constable, churchwarden, overseer, or some other parish officer, who shall carry such person so seized before a justice; who shall, either on confession, or proof by witness upon oath, convict the offender, and by his warrant cause the sum of 12*l.* to be forthwith levied by distress and sale of the offender's goods, wares, or merchandizes. 9 & 10 *W. c. 27. f. 8.*

5. If any person shall lend or let out to hire his licence, he and also the person trading under colour thereof, shall forfeit each 40*l.* half to the king, and half to him that shall sue in any court of record. 3 & 4 *An. c. 4. f. 4.* Lending licences.

6. If any person shall forge or counterfeit, or travel with a forged or counterfeited licence; he shall forfeit 50*l.* half to the king, and half to him that shall sue in the courts at *Westminster*, and shall also be liable to be punished for forgery. 9 & 10 *W. c. 27. f. 5.* Counterfeiting licences.

7: But nothing herein shall prohibit any person from selling acts of parliament, forms of prayer, proclamations, gazettes, licensed almanacks, or other printed papers licensed by authority; or any fish, fruits, or victuals; nor to hinder any person who is the real worker or maker of any goods or wares, or his children, apprentices, servants, or agents, from carrying abroad, exposing to sale, or selling any of the said goods and wares of his own making, in any publick fair, market, or elsewhere; nor any tinker, cooper, glazier, plumber, harness mender, or other person usually trading in mending kettles, tubs, household goods, or harness, from going about and carrying with him proper materials for mending the same. 9 & 10 *W. c. 27. f. 9.* Exceptions.

Also persons trading in the woollen and linen manufactures, and selling the same by wholesale, shall not be deemed hawkers, pedlars, or petty chapmen. 3 & 4 *An. c. 4. f. 14.*

Also no maker or wholesale trader in *English* bone lace, shall be deemed a hawker, pedlar, or petty chapman. 4 *G. c. 6.*

Also nothing herein shall extend to hinder any person from selling any goods in any publick fair or market. 9 & 10 *W. c. 27. f. 12.*

And nothing herein shall give any power for the licensing of such persons to sell any goods in cities, boroughs, towns corporate, or market towns, otherwise than they might have done before. 9 & 10 *W. c. 27. f. 15.*

8. Persons sued for any thing done herein, may plead the general issue, and have treble costs. 9 & 10 *W. c. 27. f. 6.* Treble costs.

Hawks and hawking. See Game.

Hay.

THE 2 *W. Sess.* 2. c. 8. and 8 & 9 *W. c.* 17. do contain regulations concerning the selling of hay within the bills of mortality, which are not general enough to be here inserted at large.

Hays. See Game.

Heath. See Game.

Hedge breaking. See Wood.

Hemp.

IT shall not be lawful to any person to water any hemp or flax, in any river, running water, stream, brook, or other common pond, where beasts used to be watered; on pain that every person offending shall forfeit 20 s. half to the king, and half to the party grieved, or any other who shall sue in any court of record, leet, or law day. 33 *H. 8. c.* 17.

Hides and Skins. See Leather.

High constable. See Constable.

High treason. See Treason.

Highways.

NOTE; Bridges repaired by the parish or township, and which consequently come under the cognizance of the surveyor of the highways, are comprehended under this title: County bridges are treated of under title *Bridges*.

For the ordering of streets in cities and market towns, see title *Scavengers*.

Most of the books are remarkably confused under this title; occasioned by a multiplicity of statutes, standing unrepealed, and yet altered perhaps five or six times, or oftner, by succeeding statutes. In order to extricate the subject out of which perplexity, I have endeavoured to make the heads of this title less general, selecting the law relating to each distinct article by it self.

But before I descend to particulars, it is proper to premise a clause in the statute of the 24 G. 2. c. 43. which makes a great alteration in the whole law relating to this title; and is as follows:

Whereas several acts have been made, as well for repairing and amending divers publick roads, as for punishing offences done or committed upon or to the highways, the good intentions whereof have not been answered, for want of due execution of the said laws; for remedy, and as a further encouragement to informers, All penalties and forfeitures imposed by this or any former act, shall be wholly given to, and vested in the informer or person who shall sue for the same, who may sue for and recover the same in the same manner as they are directed to be sued for and recovered by the said statutes respectively; or otherwise by action at law, in any of the courts of record at *Westminster*, in manner following, *viz.* Where any person shall be liable to a pecuniary penalty, the same may be sued for by action of debt, in which it shall be sufficient to declare, that the defendant is indebted to the plaintiff in the sum of ——— being forfeited by an act intitled ———. And where the forfeiture is of any horse, or other goods, by an action of trover, in which the value of such horse or other goods liable to the forfeiture shall be given in damages, without any seizure or demand thereof: And the plaintiff, if he recovers, shall have double costs. Provided, there shall not be more than one recovery for the same offence; and that no action be brought by virtue of this act, in any of the said courts, unless it be brought before the end of six calendar months after the offence committed.

S. 11.

This being premised, I shall reduce the other laws concerning highways, under the following heads:

I. What is a highway.

II. Concerning the special sessions for the highways.

III. Appointment of the surveyor.

IV. Surveyor's general duty on acceptance of his office.

V. Who shall repair.

VI. The proportion of labourers and carriages.

VII. Providing materials.

VIII. Concerning the six days work.

IX. Of annoyances in general.

X. Ditches adjoining to the highway.

XI. Water in the highway.

XII. Hedges adjoining to the highway.

XIII. Wood growing in the highway.

XIV. Straw, dung, stones, timber, laid in the highway.

XV. Gate

Highways.

- XV. Gate erected cross the highway.*
- XVI. Nuisance by an unlawful number of horses or beasts in carriages.*
- XVII. Nuisance by unlawful breadth and tire of wheels.*
- XVIII. Nuisance of riding upon carriages, or the drivers otherwise misbehaving.*
- XIX. Pulling up blocks in the highway.*
- XX. Concerning guide posts.*
- XXI. Breadth and widening of highways.*
- XXII. Lands given to repairing highways.*
- XXIII. Assessment for the repair of highways.*
- XXIV. In what case the whole parish shall be contributory.*
- XXV. Further provision for the same by the common law.*
- XXVI. Presentment or indictment of the highways in general.*
- XXVII. Presentment by a justice on his own view.*
- XXVIII. Power of the leet to punish offences.*
- XXIX. Fines and the disposal thereof.*
- XXX. Surveyor's account.*
- XXXI. Appeal.*
- XXXII. Turnpikes.*

I. What is a highway.

Three kinds of highways.

1. There are three kinds of ways; 1. A foot way. 2. A foot and horse way, which is also a pack or drift way. 3. A foot, horse, and cart way. 1 *Inst.* 56.

Difference between a highway and a private way.

2. It seemeth that any one of the said ways, which is common to all the king's people, whether it leads directly to a market town, or only from town to town, and does not terminate there, but is also a thoroughfare to other towns, may properly be called a highway. And therefore the distinction which is taken in some books, concerning this matter, seems to be very reasonable; that every way from town to town may be called a highway, because it is common to all the king's subjects; and consequently that a nuisance therein is a common nuisance, and punishable by indictment: but that a way to a parish church, or to the common fields of a town, or to a private house, or perhaps to a village which terminates there, and is for the benefit of the particular inhabitants of such parish, house, or village only, may be called a private

vate way, but not a highway, because it belongeth not to all the king's subjects, but only to some particular persons, each of which, as it seems, may have an action on the case for a nuisance therein.

1 *Harw.* 201.

3. It hath been holden, that if there be an highway in an open field, and the people have used time out of mind, when the ways are bad, to go by outlets on the land adjoining, such outlets are parcel of the way; for the king's subjects ought to have a good passage, and the good passage is the way, and not only the beaten track; from whence it follows, that if such outlets be sown with corn, and the beaten track be foundrous, the king's subjects may justify going upon the corn. 1 *Harw.* 201.

How far outlets are part of the highway.

4. In books of the best authority, a river common to all men is called an highway. 1 *Harw.* 201.

How far a river may be an highway.

5. It seemeth to be agreed, that an ancient highway cannot be changed, without the king's licence first obtained upon a writ of *ad quod damnum*, and an inquisition thereon found, that such a change will not be prejudicial to the publick; and it is said, that if one change a highway without such authority, he may stop the new way whenever he pleases; and it seemeth, that the king's subjects have not such an interest in such new way, as will make good a general justification of their going in it as a common highway, but that in an action of trespass brought by the owner of the land, against those who shall go over it, they ought to shew specially, by way of excuse, how the old way was obstructed, and the new one set out; also it is said, that the inhabitants are not bound to keep watch in such a new way, or to make amends for a robbery therein committed, or to repair it.

Highway changed.

1 *Harw.* 201.

But by the 8 & 9 *W. c.* 16. Where any highway shall be inclosed, after a writ of *ad quod damnum* issued, and inquisition thereupon taken, any person aggrieved by such inclosure, may complain thereof by appeal to the next quarter sessions, whose determination shall be final; and if no appeal be made, the inquisition and return, entered and recorded by the clerk of the peace at the quarter sessions, shall be binding to all persons. 8. 6.

However it is certain, that a highway may be changed by the act of God; and therefore it hath been holden, that if a water which has been an ancient highway, by degrees changes its course, and goes over different ground from that whereon it used to run, yet the highway continues in the new channel, in the same manner as in the old. 1 *Harw.* 202.

6. The freehold of the highways is in him that hath the freehold of the soil; but the free passage is for all the king's liege people. 2 *Inst.* 705.

To whom the freehold of an highway belongeth.

II. Concerning the special sessions for the highways.

Special sessions.

1. The justices, in their respective divisions, shall once in 4 months (on pain of 5*l.*) hold a special sessions for the highways, and shall thereunto summon all the surveyors, and give them a charge, and declare unto them their duty. 3 *W. c.* 12. *f.* 9, 11.

2. And

2. And one of the said sessions shall be holden on *Jan. 3.* yearly, or within 15 days after. 3 *W. c. 12. f. 3.*

Surveyors appointed.

III. Appointment of the surveyors.

1. On *Dec. 26.* yearly, unless it be *Sunday*, and then on the 27th, the constables, churchwardens, surveyors of the highways, and inhabitants in every parish, shall assemble, and the major part of them shall make a list of the names of a competent number of the inhabitants in their parish, who have an estate in lands, tenements, or hereditaments in their own or their wives right, of 10*l.* a year, or a personal estate of the value of 100*l.* or are occupiers or tenants of houses, lands, tenements, or hereditaments, of 30*l.* a year, if any such there be, or if there be no such persons in the parish, then the said list to be of the most sufficient inhabitants. 3 *W. c. 12. f. 3.*

2. And shall return such list to the special sessions to be held for that purpose within the division, on *Jan. 3.* or within 15 days after; of the time and place of which sessions so to be holden, the said justices shall give notice (A) to the constables, churchwardens, and surveyors, at least ten days before. 3 *W. c. 12. f. 3.*

3. And if the constables, churchwardens, and surveyors shall not return such list, every of them making default shall forfeit 20*s.* by distress, by warrant of two of the said justices, or in default thereof, of any neighbouring justices. 3 *W. c. 12. f. 4.*

4. And the said justices shall then and there, out of the said lists, according to their discretion, and the largeness of the parish, by warrant under their hands and seals (B), nominate and appoint one, two, or more, as they shall think fit and approve of, to be surveyor or surveyors of the highways of every parish or town within the division for the year ensuing. 3 *W. c. 12. f. 3.*

5. Which nomination and appointment shall by the constables or surveyors be notified to the person so nominated, within six days after such nomination, by serving him with the said warrant, or by leaving the same, or a true copy thereof, at his house or usual place of abode; and from thenceforth he shall be surveyor. 3 *W. c. 12. f. 3.*

6. If he shall not take upon him, and execute the office, he shall forfeit 5*l.* in like manner. 3 *W. c. 12. f. 3.*

7. And in case of such neglect or refusal, the said justices shall appoint others in like manner, who shall execute the office, on the like penalty. 3 *W. c. 12. f. 3.*

IV. Surveyor's general duty on acceptance of his office.

Receiving the former surveyor's account.

1. He shall receive what money remained in his predecessor's hands. 3 *W. c. 12. f. 9.*

Making a survey of the roads.

2. He shall within 14 days after acceptance of his office, and so from time to time every four months, or oftner, if required thereunto by warrant of two justices, view all the roads, common highways, bridges, causeways, pavements, hedges, ditches, and watercourses

watercourses appertaining to such highways, together with all nuisances, or incroachments thereupon, and give a particular and true account in writing upon oath, of the state and condition of all such highways, and more especially of such faults and defects as want to be repaired, and of the neglects of labourers, to the next special sessions, to the end that the said accounts may be carefully preserved, and that at all future sessions the justices of the division may have full information of, and may be able to examine into the particular state and condition thereof: And if he shall neglect to give such account, he shall forfeit 5*l.* by distress, by warrant of two justices of the division, or in default thereof, of any neighbouring justices. 1 *G. ft. 2. c. 52. s. 2.*

For which oath no fee shall be taken. S. 11.

3. And there is a general penalty of 40*s.* laid on him by the Penalty for neglects of 3 *W. c. 12.* and 1 *G. ft. 2. c. 52.* for any neglect of duty. his duty, on either of the said acts, to be levied in like manner.

V. Who shall repair.

It seems to be agreed, that of common right (that is, by the Parish in general common law) the general charge of repairing all highways lies on the occupiers of the lands in the parish wherein they are: But there is no doubt, but particular persons may be burdened with the general charge of repairing a highway, in two cases:

1. In respect of an inclosure of the land wherein it lies; as where the owner of lands not inclosed, next adjoining to the highway, incloseth his lands on both sides thereof; in which case, he is bound to make a perfect good way, and shall not be excused for making it as good as it was at the time of the inclosure, if it were then any way defective; because, before the inclosure, the people used, when the way was bad, to go for their better passage, over the fields adjoining, out of the common tract, which liberty is taken away by the inclosure. 1 *Harw. 202.* Repairing in respect of an inclosure.

And if the way is not sufficient, any passenger may break down the inclosure, and go over the land, and justify it, till a sufficient way is made. 3 *Salk. 182.*

Also it hath been holden, if one inclose land on one side, which hath been anciently inclosed of the other side, he ought to repair all the way; but if there be not such an ancient inclosure of the other side, he ought to repair but half that way; and it is said, that wherever one is bound to repair a highway, in respect of an inclosure, and lays it open again as it was before, he shall be freed from the charge of repairing it. 1 *Harw. 202.*

2. A particular person may be bound to repair a highway, in respect of a prescription; and it is said, that a corporation aggregate may be compelled to do it, by force of a general prescription, that it ought and hath used to do it, without shewing that it used to do so in respect of the tenure of certain lands, or for any other consideration; because such a corporation in judgment of law never dies, and therefore if it were ever bound to such a duty, it must needs continue to be always so; neither is it any plea, that such corporation hath always done it out of charity, for what it

Repairing by prescription.

it hath always done, it shall be presumed to have been always bound to do: but it is said, that a person cannot be charged with such a duty, by a general prescription from what his ancestors have done, unless it be for some special reason, as the having land descended from such ancestors, which are holden by such like service. 1 *Haw.* 202.

Yet it seems, that an indictment charging a tenant in fee simple, with having used of right to repair such a way by reason of the tenure of his land, is certain enough, without adding, that his ancestors or those whose estate he hath, have always so done; for that is implied. 1 *Haw.* 203.

But the indictment must set forth, where those lands lie. 2 *H. H.* 181.

VI. The proportion of labourers and carriages.

Proportion of
labour.

1. Every person, for every ploughland in tillage or pasture that he shall occupy in the parish, shall find and send at every day and place appointed, one wain or cart, furnished after the custom of the country with oxen, horses, or other cattle, and all other necessities meet to carry things convenient for that purpose, and also two able men with the same. 2 & 3 *P. & M. c. 8. f. 2.*

Every person] It hath been holden, that persons in holy orders are within the purview of these statutes, in respect of their spiritual possessions, as much as any other persons whatsoever in respect of any other possessions; for the words are general, and there is no kind of intimation that any particular persons shall be exempted more than others. 1 *Haw.* 204.

For every ploughland] Therefore if he occupies and keeps in his possession several ploughlands in several towns, he shall be charged to find in each town or parish where such ploughlands do lie, one cart or carriage, in like manner as if he were a parishioner in the several parishes. 18 *El. c. 10. f. 4.*

Ploughland] By the 7 & 8 *W. c. 29.* A ploughland, as to repairing highways, is limited to 50 *l.* a year.

That he shall occupy] It hath been holden, that notwithstanding the words of the statute extend only to the occupiers of land, yet if the owner neither occupy them, nor let them, but suffer them to lie fresh, he shall be charged as much as if he had occupied them; for there is no reason that the publick should suffer for his negligence. 1 *Haw.* 204.

In the parish] And if he shall occupy a ploughland lying in several parishes, he shall be chargeable within the parish where he dwelleth, in like manner as a person having a ploughland in any one parish. 18 *El. c. 10. f. 3.*

2. Also every person keeping a draught or plough in the parish, shall find and send one wain or cart in like manner, with two able men. 2 & 3 *P. & M. c. 8. f. 2.*

And

And it hath been holden, that he who keeps several draughts in a parish, is bound to send a team for each draught, whether he occupy any land in the parish or not. 1 *Haw.* 204.

3. And where there is no use of carts and teams for amending of highways, but the usage is to carry materials on horses backs or any other kind of carriage; the inhabitants shall send such horses or carriages, with able persons to work with the same, under the like penalty as for carts and teams. 22 *C.* 2. c. 12. s. 8.

4. And if the said carriages shall not be thought needful by the surveyor, then the person that should have sent such carriage, shall for every carriage so spared, send two able men. 2 & 3 *P. & M.* c. 8. s. 2.

5. Moreover, besides those persons who are obliged to send carriages, every other person (except in *London*) that shall be assessed to the payment of any subsidy, to 5 *l.* in goods, or 40 *s.* in lands, shall find two able men. 18 *El.* c. 10. s. 2.

6. And every other householder, cottager, and labourer, able to labour, and being no hired servant by the year, shall by himself or one sufficient labourer, work on the said days. 2 & 3 *P. & M.* c. 8. s. 2.

VII. Providing materials.

1. The surveyor may take and carry away of the rubbish or Surveyor may take and carry away rubbish. smallest broken stones of any quarry within the parish, without licence, controulment, or impeachment of the owner, so much as he shall judge necessary for repairing the ways. 5 *El.* c. 13. s. 3.

But he may not cause any rubbish to be digged out of a quarry, but only shall have such as shall be found there ready digged by the owner or his order. *Id.* s. 4.

2. And for default of any quarry, not being within his limits, May gather stones. or in default of rubbish not to be found there, he may gather stones lying upon any grounds within the parish, and meet to be used for such purpose; and thereof take and carry away so much as by his discretion shall be thought necessary to be employed in the amendment of the highways. 5 *El.* c. 13. s. 3.

3. Likewise in default of such quarry, or in default of such rubbish in any such quarry, he may in the several ground of any person within his limits, and nigh adjoining to the highway, and wherein gravel, sand, or cinders are likely to be found, dig or cause to be digged for them. 5 *El.* c. 13. s. 3. May dig for gravel.

But he may not dig for the same, in any man's house, garden, orchard, or meadow. *Id.* s. 4.

Nor shall he cause any more pits to be digged for gravel, in any several and inclosed ground than one only, nor shall the pit be in length or breadth above ten yards over; and he shall within a month cause the pit to be filled with earth at the costs of the parishioners; on pain of forfeiting to the owner of the soil, 5 marks, to be recovered by action of debt. *Id.* s. 4.

And by the 26 *G.* 2. c. 28. If any person shall by reason of getting any gravel, sand, stones, chalk, or other materials, for repairing any highway, or for any other purpose whatsoever,

make or cause to be made any pit or hole in any common, heath, or waste ground, he shall forthwith cause the same to be sufficiently fenced off during such time as it shall be continued open, and shall within 14 days after digging for such materials in such pit or hole, cause the same to be filled up, sloped down or fenced off, and so continued; and if he shall not fill up, slope down or fence off the same, and keep the said fence from time to time in good repair, one justice on view, or oath of one witness, may order him to fill up, properly slope down, or fence off the same, and where any fence shall be set up may order the same to be repaired; and if he shall not comply with such order in ten days after his receipt thereof, or the same being left at his usual place of abode, and due proof being made upon oath before any one justice, of the offence committed, of the service of such order, and of the refusal or neglect to comply therewith, such person shall forfeit not exceeding 10*l.* nor less than 40*s.* to be laid out in filling up, sloping down, or fencing off the same, and towards the repair of the roads in the parish or place where the offence shall be committed, and in such manner as the justice shall direct; which, if not forthwith paid, shall be levied by distress, by warrant of such justice.

May purchase materials.

4. And whereas divers parishes and townships have not any gravel, stones, quarries, nor other materials, fit for repairing highways, and the surveyor is forced to lay out his own money for buying the same, it is enacted, that upon notice given by the surveyor to the special sessions, and oath made of what sum he hath laid out, the justices there, or two of them, shall by warrant under their hands and seals cause an equal rate to be made for reimbursing the surveyor, according to the method of the poor rate prescribed by the 43 *El. c. 2.* which rate being confirmed and allowed by the said justices in their special sessions, shall be collected by the surveyor; and if any person refuse to pay, it shall be levied by the surveyor by distress. 3 *W. c. 12. f. 13.*

And if the justices refuse to make a rate, they are compellable by *mandamus* from the king's bench, on affidavit of the money having been laid out; and the *mandamus* shall be directed to the justices of the county, and served on those of the private sessions. 1 *Haw. 206.*

Six days labour.

VIII. Concerning the six days work.

1. The surveyor shall appoint six days, for the providing stones, gravel, and other materials as aforesaid, and for working in the highways, having respect to the season of the year, and the weather, and giving notice publickly some convenient time before the several days. 22 *C. 2. c. 12. f. 12.*

2. And the justices at the special sessions, by writing under their hands and seals may order the reparation of those great roads which do most want repair, to be first amended, and at what time, or in what manner, the same shall be performed; according to which order the surveyor shall proceed; and if they make no such order, then according as to the surveyor shall seem most needful:

needful: And he shall take care, as far as possible, that the work be perfected before the time of harvest. 1 G. 2. c. 52.

f. 3, 4.

3. At the said several days so appointed, all persons liable shall attend and work. 22 C. 2. c. 12. f. 12.

4. And every person and carriage shall have with them such shovels, spades, picks, mattocks, and other tools and instruments, as they make their own ditches and fences with, and such as are necessary for the work. 2 & 3 P. & M. c. 8. f. 2.

5. And they shall work eight hours each day, unless they be otherwise licensed by the surveyor. 2 & 3 P. & M. c. 8. f. 2.

6. And if any person shall fail to make his respective days labour, or neglect to send his horses and carriages, the surveyor shall give an account thereof in writing on oath to the special sessions, and two justices there may levy by distress and sale of the goods of such defaulter (not having a reasonable excuse to be allowed by the said justices) for every day labourer 1s. 6d. for a man and horse 3s. for a cart with two men 10s. each day. 22 C. 2. c. 12. f. 9. Or the leet may inquire thereof, by fine and estreat. 2 & 3 P. & M. c. 8. f. 2.

IX. Of annoyances in general.

Annoyances and removal thereof.

1. There is no doubt, but that all injuries whatsoever to any highway, as by digging a ditch, or making a hedge overthwart it, or laying logs of timber in it, or by doing any other act, which will render it less commodious to the king's people, are publick nuisances at common law. 1 Haw. 212.

2. And by the common law any one may abate a nuisance to a highway, and remove the materials, but not convert them to his own use. 1 Haw. 214.

3. Also it seemeth, that an heir may be indicted for continuing an incroachment, or other nuisance to a highway, begun by his ancestor; because such a continuance thereof amounts in the judgment of law to a new nuisance. 1 Haw. 214.

4. And by the statute of the 3 W. c. 12. f. 8. If such annoyances shall not be removed and amended within 30 days after notice given in the church immediately after sermon, by the surveyor, he shall within 30 days remove and amend the same, and dispose thereof for the repair of the highways. And he shall be reimbursed what charges he shall be at in so doing, by the parties who should have done the same; and if they shall upon demand refuse or neglect to pay the same, the surveyor shall apply to a justice of the division, and in default thereof to a neighbouring justice of the county, and upon his making oath before such justice of the notice to the defaulter in manner aforesaid, he shall be repaid all such his charges as shall be allowed to be reasonable by the said justice, to be levied by distress.

5. And by the 1 G. 2. c. 52. If they shall not be removed in 30 days, after due notice thereof given by the surveyor; the offender shall forfeit any sum not exceeding 5*l*. nor under 20*s*. to

be levied by warrant of the justices at the special sessions, by distress. S. 8.

Ditches.

X. Ditches adjoining to the highway.

1. To suffer the ditches adjoining to a highway to be foul, by reason whereof it is impaired, is a nuisance at common law.

1 *Haw.* 212.

2. And it is said, that he who hath lands next adjoining to a highway, is bound of common right to scour his ditches: But it is said, that he who hath lands next adjoining to such lands, is not bound by the common law so to do, without some special prescription for that purpose. 1 *Haw.* 213.

3. And by the statute of the 5 *El.* c. 13. s. 7. The ditches next adjoining to the highway shall be scoured by the owner of the soil which shall be inclosed with the same.

4. And by the 1 *G.* s. 2. c. 52. If any person who ought to scour and keep open ditches, adjoining to the highways, shall not amend the same in 30 days after due notice from the surveyor, or shall leave the earth of ditches scoured in the highways for the space of 8 days, he shall (on oath being made thereof at the special sessions by the surveyor) forfeit for every 8 yards of ditching not scoured and kept open 2 s. 6 d. by warrant of the justices at the said special sessions, by distress. And the surveyor shall scour and open the said ditches. S. 8.

Water.

XI. Water in the highway.

1. The surveyor may turn any watercourse or spring of water, being in the highway, into any ditch of the several ground of any person next adjoining to the highway, as by his discretion shall be thought meetest and most convenient. 5 *El.* c. 13. s. 6.

2. And every person that shall occupy any lands adjoining to the said ground so adjoining to any highway, where any ditching or scouring ought to be, shall, as need shall require, ditch and scour in his ground so adjoining, whereby the water conveyed from the highway over the ground next adjoining, may have passage over the said ground so next adjoining. 18 *El.* c. 10. s. 6.

3. And if any person who ought to scour and keep open usual watercourses, adjoining or near to the highways, and effectually to amend them, shall by the space of 30 days after due notice thereof given by the surveyor, neglect or delay to do the same, he shall (on oath thereof being made by the surveyor, before the justices at the special sessions) forfeit for every 8 yards so not scoured and kept open, 2 s. 6 d. to be levied by warrant of the said justices, by distress. And the surveyor shall scour and keep open such ditches and watercourses; and where the ditches and drains already made are not sufficient to carry off the water, the surveyor may make new ones in and through the lands next adjoining or near to the highways, and keep them scoured, cleansed, and open, and may come upon the lands with their workmen for that purpose. 1 *G.* s. 2. c. 52. s. 8. 3 *W.* c. 12. s. 12.

XII. Hedges adjoining to the highway.

Hedges.

1. It seemeth clear, that it is a nuisance at common law, to suffer the boughs of trees growing near the highway, to hang over the road in such a manner, as thereby to incommode the passage. *1 Haw. 212.*

2. And perhaps it is the better opinion, that he who hath trees next adjoining to the highway, and hanging over it to the annoyance of the people, is bound by the common law to lop the same; and it seems clear, that any person may justify the lopping such trees, so far as to avoid the nuisance. *1 Haw. 213.*

3. And by the statute of the 7 G. 2. c. 9. it is provided, that if the surveyor on his view shall find any highway deep and foundrous, and the hedge adjoining to be so high as to prevent the benefit of the sun and wind, he shall make a presentment thereof to the justices at their special sessions; which justices, or two of them, may by warrant summon the occupier of the lands adjoining to the highway, to appear at the next monthly or other publick meeting of the justices, in or near the division, to shew cause why such hedge should not be new made, or cut low; and if such person appear not, nor send some person to appear, or if it shall appear upon proof on oath that such way is deep and foundrous, and damaged by the height of such hedge, the said justices, or two of them, shall issue a precept under hand and seal to the surveyor, to give or leave notice in writing at the usual place of abode of such person whose hedge was presented, that he is thereby required to new make or cut low the said hedge, within 30 days after such notice (provided that such notice be given between September 30. and February 1.) and in case of his refusal or neglect to do the same within the said 30 days, the surveyor shall cause the hedge to be new made or cut low, as he shall think most reasonable, so as such hedge be left at least 3 foot high above the bank. *S. 1.*

And such person shall repay to the surveyor such reasonable expences as he shall have been put to on that occasion; and if he shall refuse or neglect to repay the same, within 14 days after demand, the justices upon complaint thereof at their monthly or other publick meeting, in or near the division, and due proof upon oath of such expences of the surveyor, shall issue a precept under the hands and seals of them, or two of them, to the constable or other proper officer of the hundred, parish, or place, requiring him to levy the said sum by distress. *Id. f. 2.*

But nothing herein shall alter the laws in relation to timber trees, which grow in hedges adjoining to the highways. *Id. f. 3.*

XIII. Wood growing in the highway.

Wood.

No tree, bush, or shrub, shall be permitted to grow in any highway not full 20 foot broad, but shall be cut down, grubbed up, and carried away by the owner of the land or soil, in ten days after notice given to him by the surveyor; on pain of 5 s. by

distress, by warrant of two justices of the division, or in default thereof, of any neighbouring justices of the county. 3 *W. c. 12.* s. 6.

Straw, dung,
stones, timber.

XIV. Straw, dung, stones, timber, laid in the highway.

1. There is no doubt, but that all obstructions by laying straw, dung, stones, logs of timber, and the like, in the highway, are nuisances at common law. 1 *Haw. 212.*

2. And it seemeth to be clear, that it is no excuse for one who layeth such logs in the highway, that he laid them only here and there, so that the people might have a passage by windings and turnings thro' the logs: yet it is said to be no nuisance for the inhabitants of a town to unlade billets, and the like, in the street before their houses, by reason of the necessity of the case, unless they suffer them to continue there an unreasonable time after they are unloaded. 1 *Haw. 212.*

3. And by the statute of 3 *W. c. 12.* No person shall lay in any highway not being 20 foot broad, any stone, timber, straw, dung, or other matter, whereby the same shall be any ways obstructed or annoyed; on pain of 5 s. by distress, by warrant of two justices of the division, or in default thereof, of any neighbouring justices of the county. S. 4.

And if any timber, stone, hay, straw, stubble, or other matter for the making of dung, or on any other pretence, shall be laid in any such highway, whereby the same shall be any ways obstructed or annoyed; the owner or possessor of the lands next adjoining, shall clear the way by removing the same, and shall take the same to his own use: and if he shall neglect so to do, for ten days after notice given to him by the surveyor, he shall forfeit 5 s. in like manner. S. 5.

4. And by the 1 *G. 2. c. 52.* If any person who ought to remove such annoyances, shall for 30 days after due notice thereof given by the surveyor, neglect or delay to do the same; he shall forfeit not exceeding 5 l. nor under 20 s. by warrant of the justices at the special sessions, by distress: and the surveyor shall remove the same. S. 8.

Gate. <

XV. Gate erected across the highway.

A Gate erected in a highway, is a common nuisance, because it interrupts the people in that free and open passage which they before enjoyed, and were lawfully intitled to; but where such a gate has continued time out of mind, it shall be intended that it was set up at first by consent, on a composition with the owner of the land on the laying out the road, in which case the people had never any right to a freer passage than what they still enjoy. 1 *Haw. 199.*

XVI. Nuisance

XVI. Nuisance by an unlawful number of horses or beasts in carriages.

1. No travelling waggon, wain, cart, or carriage, wherein any goods shall be carried (other than such as are employed in or about husbandry and manuring of lands, and in the carrying of hay, straw, corn unthrashed, coal chalk, timber for shipping, materials for building, stones of all sorts, ammunition or artillery for his majesty's service) shall travel in any highway, with above 5 horses at length; on pain of 40s. on conviction before one justice, on his view, or oath of one witness, by distress. 22 C. 2. c. 12. s. 7. Penalty of having above 5 horses in length.

And every constable, or surveyor, wilfully suffering any waggons or carts to pass thro' his limits, in other manner than by this act is allowed, shall forfeit in like manner 40s. *Id.* s. 1.

2. No travelling waggon, wain, cart, or carriage, wherein any goods shall be carried (other than such as are employed about husbandry and manuring of lands, and in the carrying of hay, straw, corn unthrashed, chalk, timber for shipping, materials for building, stones of all sorts, ammunition or artillery for his majesty's service) shall go with above 5 horses, oxen, or beasts in length; on the like pains, and subject to the like provisos, as by the 6 An. c. 29. and 9 An. c. 18. hereafter following. 1 G. c. 11. Penalty of having above 5 horses or oxen in length.

3. No waggon (whether travelling for hire or not, 14 G. 2. c. 42. s. 6.) shall go or be drawn with more than 6 horses, either in length, or in pairs, or sideways; on pain that the owner or driver shall forfeit all his horses above 6, with all geers, bridles, halters, and accoutrements, to him who shall seize or distrain the same. And the person who shall make such seizure or distress, shall deliver the same to the constable, or some parish officer, of the same or next adjacent parish where the seizure is made, till the person seizing shall make proof upon oath before some justice, of the offence committed; and the said justice shall issue his precept to such officer, immediately to deliver the same for the sole use of the person seizing, paying such reasonable charge for keeping and securing the same, as the justice shall direct. And if an person shall attempt to obstruct the execution hereof, he shall on conviction by the oath of one witness before one justice, be committed to gaol for 3 months, and shall also forfeit 10 l. by warrant of such justice by distress, and if not paid in 3 days, the distress to be sold. 5 G. c. 12. Penalty of having above 6 horses in length, pairs, or sideways.

But the statute of the 27 G. 2. c. 20. allows a further time for keeping all such distresses, viz. not less than 4 days, nor more than 8.

Or, before the goods are seized, oath may be made at any time within 3 days, before any justice where the offence was committed, or the offender shall happen to be; and the goods shall remain for 3 days after the offence liable to seizure and distress, for the use of the informer in like manner as if they had been seized in the fact. 14 G. 2. c. 42. s. 6.

Or (as hath been said at the beginning of this title) an action of trover may be brought for the same, wherein if the plaintiff recovers, he shall have double costs. 24 G. 2. c. 43. f. 11.

Or above 4 horses in carts.

And moreover, no cart (whether travelling for hire, or not for hire, 14 G. 2. c. 42. f. 6.) shall be driven with more than (four horses, 16 G. 2. c. 29.) ; on pain that the owner or driver shall in like manner forfeit all the horses above 4, with the geers, bridles, halters, and accoutrements. 5 G. c. 12. f. 1.

But nothing in this section shall extend to such waggons, wains, carts, or carriages, as shall be employed about husbandry or manuring of land, and in the carrying of cheese, butter, hay, straw, corn unthreshed, coals, chalk, or any one tree or piece of timber, or any one stone, or block of marble, carravans, and the covered carriages of noblemen and gentlemen for their own private use, or such timber, ammunition, or artillery as shall be for the service of the king, his heirs, and successors. 5 G. c. 12. f. 5.

Penalty of having above 6 horses or oxen, in length, pairs, or sideways.

4. By 6 An. c. 29. and 9 An. c. 18. No travelling waggon, wain, cart, or carriage, wherein any goods shall be carried (other than such as are employed in and about husbandry and manuring of land, and in the carrying of hay, straw, (corn unthreshed, 1 G. c. 11.) chalk, timber for shipping, materials for building, stones of all sorts, or ammunition or artillery for the service of his majesty, his heirs, or successors) shall travel or go in any highway, with above 6 horses, oxen, or beasts; on pain of 5 l. And any person may seize or distrain any or all the horses, oxen, or beasts of any person offending herein, and forthwith deliver them to the surveyor or other parish officer, and if the penalty is not paid in 3 days, such officer shall by warrant of one justice sell the same; rendering the overplus, charges first deducted.

And if any person employed by any carrier, drive or assist in driving such unlawful number, he shall forfeit 5 l. in like manner.

And the surveyor wilfully suffering them to travel with more, shall also in like manner forfeit 5 l.

Exception of drawing up steep hills.

5. But nothing in any of the aforesaid acts shall extend to restrain the owners of waggons or other carriages, or their servants, drawing with so many horses or beasts, up any such steep hills, as the justices at the quarter sessions shall from time to time order and direct; which order shall be kept by the clerk of the peace amongst the records of the sessions, to which all persons at reasonable times, shall have recourse *gratis*. 24 G. 2. c. 43. f. 10.

Exception where the wheels are 9 inches broad.

6. Also, it shall be lawful for any waggon or other 4 wheel carriage, having the fellies of the wheels 9 inches broad, to pass on any highway, with any number of horses and beasts not exceeding 8; and for any cart or two wheel carriage, having the like wheels, with any number not exceeding 5; without being subject to any penalties for causing them to be driven by a greater number. 26 G. 2. c. 30. f. 6.

XVII. Nuisance by unlawful breadth and tire of wheels.

1. No travelling waggon for hire (other than such as are employed in husbandry, and in carrying of cheese, butter, hay, straw, corn unthreshed, coals, chalk, or any one tree or piece of timber, or any one stone, or block of marble, carravans, and the covered carriages of noblemen and gentlemen for their own private use, or timber, ammunition, or artillery for the king's service) having the wheels bound with streaks or tire of a less breadth than two inches and an half when worn, or being fastened on with roseheaded nails, shall go or be drawn with more than three horses, between *Sep. 29.* and *April 15.* yearly; on pain that every owner or driver thereof, shall forfeit all the horses above three, with all geers, bridles, halters, and accoutrements; to be seized, distrained, or otherwise recovered, as the number of horses above six in a waggon either in length, pairs, or sideways, as is particularly specified under the third section of the last preceding head. 5 G. c. 12. 14 G. 2. c. 42. s. 2, 6. 15 G. 2. c. 2. 24 G. 2. c. 43. s. 11. Breadth of wheels.

2. By the 6 G. c. 6. No person in *London* and *Westminster*, or within 10 miles thereof (unless it be upon turnpike roads, where the fellies of the wheels are 9 inches broad, 26 G. 2. c. 30. s. 5.) shall carry at any one load, in waggons or carts having their wheels shod with iron, more than 12 sacks of meal of 5 bushels each, nor more than 12 quarters of malt, nor more than 700 $\frac{1}{2}$ of bricks, nor more than one chalders of coals; on pain of forfeiting any one of the horses, with the geers, bridles, and halters therewith used, on conviction in three days before one justice. Wheels in London.

And by the 18 G. 2. c. 33. The wheels of every cart, car, or dray within the bills of mortality, shall be six inches broad in the felley, and not wrought about with iron, nor be drawn with above the number of three horses, after they are up the hills from the water side; on pain of 40 s. by warrant of one justice, by distress; and for want of distress, or non-payment in six days after demand, to be committed till paid: But this not to extend to any country cart or waggon, that shall bring any goods, or shall carry any goods half a mile beyond the paved streets of the said cities and places.

Also any person, within the said limits, using any cart, car, or dray, having the wheels full six inches broad, when worn, may have the same bound round with tire of iron, provided it be six inches broad, and made flat, and not set on with rose-headed nails.

XVIII. Nuisance by riding upon carriages, or the drivers otherwise misbehaving.

1. By the 1 G. s. 2. c. 57. If any person, driving any cart, dray, or waggon, in the streets of *London*, shall ride upon the same,

Or (as hath been said at the beginning of this title) an action of trover may be brought for the same, wherein if the plaintiff recovers, he shall have double costs. 24 G. 2. c. 43. f. 11.

Or above 4 horses
in carts.

And moreover, no cart (whether travelling for hire, or not for hire, 14 G. 2. c. 42. f. 6.) shall be driven with more than (four horses, 16 G. 2. c. 29.); on pain that the owner or driver shall in like manner forfeit all the horses above 4, with the geers, bridles, halters, and accoutrements. 5 G. c. 12. f. 1.

But nothing in this section shall extend to such waggons, wains, carts, or carriages, as shall be employed about husbandry or manuring of land, and in the carrying of cheese, butter, hay, straw, corn unthreshed, coals, chalk, or any one tree or piece of timber, or any one stone, or block of marble, carravans, and the covered carriages of noblemen and gentlemen for their own private use, or such timber, ammunition, or artillery as shall be for the service of the king, his heirs, and successors. 5 G. c. 12. f. 5.

Penalty of ha-
ving above 6
horses or oxen,
in length, pairs,
or sideways.

4. By 6 An. c. 29. and 9 An. c. 18. No travelling waggon, wain, cart, or carriage, wherein any goods shall be carried (other than such as are employed in and about husbandry and manuring of land, and in the carrying of hay, straw, (corn unthreshed, 1 G. c. 11.) chalk, timber for shipping, materials for building, stones of all sorts, or ammunition or artillery for the service of his majesty, his heirs, or successors) shall travel or go in any highway, with above 6 horses, oxen, or beasts; on pain of 5 l. And any person may seize or distrain any or all the horses, oxen, or beasts of any person offending herein, and forthwith deliver them to the surveyor or other parish officer, and if the penalty is not paid in 3 days, such officer shall by warrant of one justice sell the same; rendering the overplus, charges first deducted.

And if any person employed by any carrier, drive or assist in driving such unlawful number, he shall forfeit 5 l. in like manner.

And the surveyor wilfully suffering them to travel with more, shall also in like manner forfeit 5 l.

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drawing up
steep hills.

5. But nothing in any of the aforesaid acts shall extend to restrain the owners of waggons or other carriages, or their servants, drawing with so many horses or beasts, up any such steep hills, as the justices at the quarter sessions shall from time to time order and direct; which order shall be kept by the clerk of the peace amongst the records of the sessions, to which all persons at reasonable times, shall have recourse gratis. 24 G. 2. c. 43. f. 10.

Exception where
the wheels are
9 inches broad.

6. Also, it shall be lawful for any waggon or other 4 wheel carriage, having the fellies of the wheels 9 inches broad, to pass on any highway, with any number of horses and beasts not exceeding 8; and for any cart or two wheel carriage, having the like wheels, with any number not exceeding 5; without being subject to any penalties for causing them to be driven by a greater number. 26 G. 2. c. 30. f. 6.

XVII. Nuisance by unlawful breadth and tire of wheels.

1. No travelling waggon for hire (other than such as are employed in husbandry, and in carrying of cheese, butter, hay, straw, corn unthreshed, coals, chalk, or any one tree or piece of timber, or any one stone, or block of marble, carravans, and the covered carriages of noblemen and gentlemen for their own private use, or timber, ammunition, or artillery for the king's service) having the wheels bound with streaks or tire of a less breadth than two inches and an half when worn, or being fastened on with roseheaded nails, shall go or be drawn with more than three horses, between *Sep. 29.* and *April 15.* yearly; on pain that every owner or driver thereof, shall forfeit all the horses above three, with all geers, bridles, halters, and accoutrements; to be seized, distrained, or otherwise recovered, as the number of horses above six in a waggon either in length, pairs, or sideways, as is particularly specified under the third section of the last preceding head. 5 G. c. 12. 14 G. 2. c. 42. s. 2, 6. 15 G. 2. c. 2. 24 G. 2. c. 43. s. 11.

2. By the 6 G. c. 6. No person in *London* and *Westminster*, or within 10 miles thereof (unless it be upon turnpike roads, where the fellies of the wheels are 9 inches broad, 26 G. 2. c. 30. s. 5.) shall carry at any one load, in waggons or carts having their wheels shod with iron, more than 12 sacks of meal of 5 bushels each, nor more than 12 quarters of malt, nor more than 700 $\frac{1}{2}$ of bricks, nor more than one chalders of coals; on pain of forfeiting any one of the horses, with the geers, bridles, and halters therewith used, on conviction in three days before one justice.

And by the 18 G. 2. c. 33. The wheels of every cart, car, or dray within the bills of mortality, shall be six inches broad in the felley, and not wrought about with iron, nor be drawn with above the number of three horses, after they are up the hills from the water side; on pain of 40 s. by warrant of one justice, by distress; and for want of distress, or non-payment in six days after demand, to be committed till paid: But this not to extend to any country cart or waggon, that shall bring any goods, or shall carry any goods half a mile beyond the paved streets of the said cities and places.

Also any person, within the said limits, using any cart, car, or dray, having the wheels full six inches broad, when worn, may have the same bound round with tire of iron, provided it be six inches broad, and made flat, and not set on with rose-headed nails.

XVIII. Nuisance by riding upon carriages, or the drivers otherwise misbehaving.

1. By the 1 G. s. 2. c. 57. If any person, driving any cart, dray, or waggon, in the streets of *London*, shall ride upon the same,

same, not having some other person on foot to guide the same; he shall on conviction before the alderman of the ward, or justice of the peace, on oath of one witness, forfeit 10 s. by distress and sale; half to the informer, and half to the poor; and in default of payment, to be sent to the house of correction for three days. S. 8.

Riding upon, or
misbehaving.

2. And by the 27 G. 2. c. 16. If the driver of any cart, car, dray, or waggon, shall ride upon any such carriage, not having some other person on foot or on horseback to guide the same (such carts as are respectively drawn by one horse only, or by two horses abreast, and are conducted by some person holding the reins of such horse or horses, excepted); or if the driver of any carriage whatsoever, on any part of any street or highway, shall by negligence or wilful misbehaviour, cause any hurt or damage to any person passing or being thereon; Every such driver offending in any of the cases aforesaid, and being convicted thereof, by confession, or oath of one witness, before one justice, shall forfeit any sum not exceeding 10 s. or shall be committed to the house of correction, for any time not exceeding one month, at the discretion of such justice. And every such driver, offending in either of the said cases, may by authority of this act, and without any other warrant, be apprehended by any person who shall see the offence committed, and shall be immediately conveyed or delivered to a constable, or other peace officer, in order to be conveyed before a justice, to be dealt with according to law. S. 7.

Note; It is not said who shall have this penalty, so that it seemeth that the justice shall estreat the same into the exchequer: And here is no power given to levy the same by distress; but if the party shall not pay upon conviction, the justice (by the act) may commit him to the house of correction.

Blocks.

XIX. Pulling up blocks in the highway.

Every person who shall pull up, cut down, or remove any post, block, great stone, bank of earth, or other security, made for securing horse and foot caufways from waggons, wains, and carts; shall (on conviction before one justice of the place or division, on view, or oath of one witness) forfeit 20 s. by distress. 7 & 8 W. c. 29. s. 6.

Guide posts.

XX. Concerning guide posts.

The justices, at the special sessions, may direct their precept to the surveyors, in any place where two or more cross highways meet, requiring them forthwith to cause to be erected or fixed, in the most convenient place where such ways join, a stone or post, with an inscription thereon in large letters, containing the name of the next market town, to which each of the said joining highways leads; who shall be reimbursed in the same manner as before is mentioned concerning the providing of materials. And if the surveyor shall, by the space of three months after such precept to him delivered, neglect or refuse to cause such stone or post to be fixed;

fixed ; he shall forfeit 10 s. to be levied by warrant of one justice by the constable, by distress, who shall employ it towards such stone or post ; and if any thing remains, he shall employ it in repairing such cross ways. 8 & 9 W. c. 16. s. 7.

XXI. Breadth and widening of the highways.

Breadth.

1. The surveyor shall make every cart way leading to any market town, eight foot wide at the least. 3 W. c. 12. s. 15.

2. And no horse caulway shall be less than three foot broad. 3 W. c. 12. s. 21.

3. By the 8 & 9 W. c. 16. The justices, or the major part of them, being five at the least, at the quarter sessions, shall have power to enlarge or widen any highways, so that the ground to be taken into them do not exceed eight yards in breadth, and so that the said power do not extend to pull down any house, or to take away the ground of any garden, orchard, court, or yard. S. 1.

In order whereunto, they shall issue their precepts to the owners of grounds, or others interested in the same, that are to be laid into the said highways, to appear at the next quarter sessions, to shew cause why the said highways should not be enlarged. S. 3.

And for the satisfaction of persons who are interested in the said ground, they are empowered to impanel a jury, and swear them, that they will assess such damages to be given and recompence to be made to the owners and others interested in the said ground rent or charge respectively, for their respective interests, as they shall think reasonable, not exceeding 25 years purchase for lands so laid out ; and likewise such recompence as they shall think reasonable, for the making a new ditch and fence, to that side of the highway that shall be so enlarged, and also satisfaction to any person that may be otherwise injured by enlarging the said highways. S. 1.

And they shall have power to order an assessment to be made upon all the inhabitants, owners, or occupiers of lands, houses, tenements, or hereditaments, that ought to repair the same, in such manner as the said justices shall appoint. S. 1.

Provided, that no such assessment in any one year, for enlarging highways, shall exceed 6 d. in the pound of the yearly income of any lands, houses, tenements, and hereditaments, nor the rate of 6 d. in the pound for personal estates. S. 2.

And the said assessment shall by order of the said justices be levied by the surveyor, by distress and sale, if not paid in 10 days after demand. S. 1.

And the money thereby raised, shall be employed and accounted for, according to the order of the said justices, towards purchasing the said lands, and making the said ditches and fences. S. 1.

And upon payment of the money so awarded, or leaving it in the hands of the clerk of the peace for the use of the owner, or others interested in the said ground, the interest of the said persons

sons in the said ground rent or charge, shall be for ever divested out of them. S. 1.

And the said ground shall be esteemed a publick highway to all intents and purposes. S. 1.

Provided, that if any such order shall be made by the said justices for the laying out of ground for the enlarging of highways, the owners of the ground shall have free liberty, within 8 months after such order, to cut down any wood or timber growing thereon; or upon the neglect thereof, the same shall be sold by order of the justices, and the owners shall receive the full of what shall be made thereof, the charges of working the same being deducted. S. 4.

And any person aggrieved by the order of the justices, may appeal to the next assizes; and if the judge shall affirm the order, he may award costs against the appellant, to be levied by distress. S. 5.

4. In order to prevent robberies, it is enacted by the 13 Ed. 1. *§. 2. c. 5.* That highways leading from one market town to another shall be enlarged, so that there be neither dyke, tree, nor bush, within 200 foot on each side of the way. Except ashes and great trees. And if by default of the lord that will not avoid the dyke, underwood, or bushes, any robbery be done therein, the lord shall be answerable for the felony; and if murder be done, the lord shall make a fine at the king's pleasure. And if the lord be not able to fell the underwoods, the country shall aid him. And if a park be taken from the highway, it is requisite that the lord shall set his park 200 foot from the highways, or that he make such a wall, dyke, or hedge, that offenders may not pass nor return to do evil.

Charities.

XXII. Lands given to repairing highways.

Where any lands have been, or shall be given for the maintenance of causeys, pavements, highways, and bridges, the trustees shall let them to farm, at the most improved yearly value, without fine; and the justices in open sessions shall inquire by such ways and means as they think fitting, into the value of such lands; and if the trustees have been faulty, they may order the improvement and imployment of the profits thereof, according to the direction of the donor. (Except lands given for the said uses to colleges or halls, which have visitors of their own.) 22 C. 2. *c. 12. §. 2.*

Assessment.

XXIII. Assessment for the repair of highways.

Where the justices at the general or quarter sessions, shall be fully satisfied, that the highways within any parish, township, or place, cannot otherwise be sufficiently repaired, an assessment upon all the inhabitants, owners, and occupiers of lands, tenements, and hereditaments, or any personal estate, usually rateable to the poor, shall be made, levied, collected, and allowed by such persons,

sons, and in such manner, as the said justices by their order at such sessions shall appoint: And the money thereby raised, shall be employed and accounted for, according to the orders and directions of the said justices, towards repairing and supporting the same: And the said assessment shall be levied by distress and sale of the goods of every person so assessed (not paying the same within ten days after demand). Provided, that no such assessment in any one year, shall exceed 6*d.* in the pound of the yearly value of any lands, houses, tenements, and hereditaments so assessed, nor the rate of 6*d.* for 20*l.* in personal estate. 3 *W. c.* 12. *f.* 17, 18.

And on application of the surveyor, the said justices may, if they see fitting, cause such assessment to be made, altho' the six days work hath not been performed; but the said assessment shall not excuse the six days labour. 1 *G. 2. c.* 52. *f.* 6.

XXIV. *In what case the whole parish shall be contributory.* Parish contributory.

If any innship, liberty, precinct, or vill, that was to repair its own highways, shall have levied 6*d.* in the pound, and employed the same in repairing, and yet the said highways are not sufficiently repaired, the justices at their special sessions may order the whole parish to contribute towards the repairing thereof. 7 & 8 *W. c.* 29. *f.* 4.

XXV. *Further provision for the same, by the common law.*

It is no excuse for the inhabitants of a parish, being indicted at common law, for not repairing the highways, that they have done all that is required of them by statute; for since these statutes are wholly in the affirmative, and made in aid of the common law, and to supply the defects thereof, they shall not be construed to abrogate any provision thereby made for these purposes. 1 *Haw.* 204. So that at all events, the parish may be compelled to make their ways good. Where the statute provisions shall fall short, the common law to come in aid.

XXVI. *Presentment or indictment (C) of highways in general.*

1. All defects of repairs of highways, shall be presented in the county where they lie, and not elsewhere. 22 *C. 2. c.* 12. *f.* 4. Indictment to be within the county.
2. And the indictment must shew, that the way is common to all the king's people; for which cause it hath been resolved, that an indictment for a nuisance to a horseway, without adding that it is a highway, is naught. 1 *Haw.* 220. Must shew it to be a highway.

Note; The expression for *the king's highway*, when the indictments were in *Latin*, was *alta via regia*; which a modern author, in his form of an indictment, translates *a royal highway*.

Must shew the places from and to which it leads.

3. It is safest in the indictment to shew both the place from which, and also the place to which the way supposed to be out of repair doth lead; yet exceptions for want of such certainty have sometimes been disallowed: however it seems certain, that there is no necessity to shew that a highway leads to a market town, because every highway leads from town to town. 1 Harw. 219.

Place where.

4. It is necessary in the indictment expressly to shew, in what place the nuisance complained of was done; for which cause, an indictment for stopping a way at *D.* leading from *D.* to *C.* is not good, for it is impossible that a way leading from *D.* should be in *D.* and no other place is mentioned. 1 Harw. 219.

Need not name the inhabitants.

5. It is said, that a presentment that a highway in such a place is decayed, by the defaults of the inhabitants of such a town is good, without naming any person in certainty. 1 Harw. 220.

Indictment against particular persons.

6. But it hath been adjudged, that an indictment against particular persons, must specially charge them every one. 1 Harw. 220.

Must set forth how much is out of repair.

7. It ought also certainly to shew, to what part of the highway the nuisance did extend, as by shewing how many foot in breadth it contained; or otherwise the defendant will neither know of the certainty of the charge, against which he is to make his defence, neither will the court be able from the record to judge of the greatness of the offence, in order to assess a fine answerable thereunto; and it hath been resolved, that the place is not sufficiently ascertained by shewing, that it contained so many foot in length, and so many in breadth, *by estimation.* 1 Harw. 220.

Must set forth the fact clearly.

8. Also, the fact must be expressed in such proper terms, that it may clearly appear to the court to have been a nuisance; and for this cause it hath been resolved, that a presentment for *diverting* a highway is not good, because a highway cannot be diverted, but must always continue in the same place where it was, howsoever it may be *obstructed*, and a new way made in another place. 1 Harw. 220.

Persons indicted to have notice.

9. It seems to be implied in the construction of all penal statutes, that no one ought to be convicted of any offence against them without having notice of the accusation made against him, and an opportunity of defending himself. And therefore it seems certain, that generally no one ought to be punished for any of the abovementioned offences, without being called upon to answer for himself, and having liberty to traverse the matters alledged against him. 1 Harw. 219.

Plea of Not guilty.

10. Upon an indictment against a parish for not repairing, they can give nothing in evidence upon the plea of Not guilty, but that the way is in repair; but if it be against a particular person, he may give evidence that others ought to repair it. 3 Salk. 183. Comb. 396.

Plea to charge others.

11. And the defendants ought not to plead that they ought not to repair, without shewing who ought. 1 Harw. 220.

Special plea.

12. And Mr. *Hawkins* says, that if a particular person be bound to repair a highway, either by inclosure or by prescription, the parish cannot take advantage of it upon the plea of Not guilty, but ought to set forth their discharge in a special plea. 1 Harw. 203.

13. After

13. After conviction, or upon a demurrer, or confession, any one may take exceptions to such indictment or presentment in any court for the want of legal form; but the court in discretion will very rarely suffer a man to take such exceptions, before such conviction or confession, without a certificate and affidavit that the ways are in good repair. 1 Haw. 219.

Exceptions to the form of the indictment.

14. And the defendants shall not be discharged by submitting to a fine, but a *disfringas* shall go in *infinitum* till they repair. 1 Haw. 220.

Fine no discharge.

15. By the 22 C. 2. c. 12. It is provided, that no presentment or indictment for the defect of repairs of highways, shall be removed by *certiorari*, or otherwise, till after traverse and judgment. S. 4.

Certiorari.

And by the statute of the 3 W. c. 12. No presentment, indictment, or order made upon that act, shall be removed at all by *certiorari*, into any other court. S. 23.

But by the 5 W. c. 11. If the right or title to repair come in question, a *certiorari* (upon affidavit made of the truth thereof) may be granted to remove the same into the king's bench; provided that the party prosecuting the *certiorari*, shall (before the allowance thereof) find two manucaptors who shall enter into recognizance of 20 l. before a justice of the peace, that he shall at his own costs and charges procure the issue to be tried at the next assizes, as in the case of other *certioraries*. S. 6.

And it hath been resolved, that if the quarter sessions, under pretence of the jurisdiction given them by these statutes, take upon them to do a thing manifestly exceeding their authority, as to make an order on surveyors to make up their accounts before a special sessions, their proceedings may be removed by *certiorari* into the king's bench, and there quashed; for the quarter sessions have no manner of power given them, to intermeddle originally with such accounts, but only by way of appeal. 1 Haw. 218.

XXVII. Presentment of a justice on his own view.

Presentment on view.

By the 5 El. c. 13. Every justice of the peace shall have authority on his own proper knowledge, in the open general sessions, to make presentment (D) of any highway not well and sufficiently repaired, or of any other default contrary to the statute of the 2 & 3 P. & M. And every such presentment made by a justice upon his own knowledge shall be as good, and of the same force, strength, and effect in the law, as if the same had been presented, found, and adjudged by the oath of 12 men: And for every such default so presented, the justices shall immediately at the said general sessions, have authority to assess such fines as to them shall be thought meet: Saving every person that shall be touched by any such presentment, to have his lawful traverse to the same presentment, as they may have upon any indictment of trespass or forcible entry. S. 9.

Hereupon it hath been observed by Mr. Dalton and others, that the justices at the said sessions may assess the fine upon such offenders, and that in the absence of the party, without calling him

him to answer by any process: Which opinion seeming contrary to natural justice, and to the privilege of an *Englishman* as established by the great charter, perhaps hath not been sufficiently weighed by all the authors who have adopted it; and there seems to be the more ground for this suspicion, in that most of them do quote Mr. *Crompton* for this opinion, one after another, in a wrong page; and in fact Mr. *Crompton* saith no such thing, but rather seems to incline to the contrary opinion; his words are these, —A presentment at the sessions by a justice of the peace, upon his own knowledge, of such a highway not repaired, is as a presentment, of 12 men, upon which the justices may assess a fine, by 5 *El. c. 13.* and 3 *P. & M. c. 8.* but the party may have a traverse to the presentment by the said statute of 5 *El. Crompt. 110.*

And Mr. *Hawkins*, observing upon this opinion, saith thus: It hath been holden, in the exposition of this clause, that the party against whom such a presentment shall be made, cannot take any traverse to the want of repair of such highway; but it is agreed, that he may plead that some other person ought to repair the same, and traverse his own obligation to do it. Neither can I see upon what reason the former opinion is grounded, that he cannot traverse the want of repair of such highway; for since the statute expressly saves to every person who shall be touched by any such presentment, his lawful traverse to the same, as he might have to an indictment of trespass or forcible entry; and since it seems clear, that every defendant to any such indictment (*viz.* of trespass or forcible entry) may traverse the whole matter alledged against him, why may he not as well have the same benefit in the present case? And tho' the record of a justice of the peace, acting by force of any statute, as a judge, be not traversable, yet it seems hard by such a general rule, to make any record not traversable, which by the express words of the statute which authorizes the making of it is allowed to be traversable. 1 *Haw. 217.*

To which may be added, that the statute doth not say, that such presentment shall be of like force as if found by the oaths of both juries (that is to say, both of the grand and traverse jury), but only that it shall be of the like force, as if it had been presented, found, and adjudged, by the oath of 12 men; which can only intend, that it shall be of equal force with the presentment of a grand jury.

So that the sense of the statute perhaps may be no more than this; that if the party is present in court, and submits to the presentment, the justices may immediately assess a fine: but he may traverse the presentment if he will; and if upon the traverse he shall be acquitted, then there can be no foundation for fining him. But if he is absent, it is reasonable that he be first summoned to answer for himself; and if he shall afterwards be convicted either by confession, or by verdict, then will be the time to set the fine. Otherwise, the assessing of a fine, in this and the like cases, seemeth to be premature; beginning where the court should end; being in effect the giving of judgment before they have heard the parties; and it is possible the defendant may be acquitted, and then

When the fining of him is ridiculous — Besides, that the court cannot so well judge beforehand of the *quantum* of the fine, which ought to be proportioned according to the demerits of the offence; of which they can by no means judge, until the matter hath come before them in a legal course of proceeding.

XXVIII. Power of the leet to punish offences.

Leets.

1. The steward of the leet hath power given him, to inquire by the oaths of the suitors, of offences against the abovesaid statutes of 2 & 3 P. & M. c. 8. and 18 El. c. 10. and to assess fines and amerciaments for the same.

2. And he who is presented in a court leet, for any offence relating to the highways, can only traverse it so far as it concerns his freehold; as by charging him with being bound to such repairs in respect of the tenure of his lands; for which purpose he may remove it by *certiorari* into the king's bench, and there traverse it. 1 Haw. 219.

XXIX. Fines and the disposal thereof.

Fines.

1. All the penalties and forfeitures by any statute (as hath been observed in the preamble to this title) are vested in the informer, by the 24 G. 2. c. 43. But the fines upon an indictment or presentment seem to continue as before.

2. Concerning which it is enacted, by the 3 W. c. 12. that no fine shall be returned into the exchequer, but shall be levied and paid into the hands of the surveyors, to be applied towards the repair of the highways. s. 14.

3. And if any fine imposed for not repairing, shall be levied on any one inhabitant, or more; such inhabitant shall make complaint to the justices at the special sessions, and the said justices or any two of them may by warrant under their hands and seals cause a rate to be made for reimbursing him; which rate so made, and confirmed by two justices, shall be collected and levied by the surveyor, by distress; who shall within one month after confirming the rate pay the same to such inhabitant. 3 W. c. 12. s. 14.

4. And if any fine shall be misapplied by any person, he shall on conviction thereof at the special sessions, by proof upon oath, forfeit 5 l. to the informer, by distress. 1 G. 1. c. 52. s. 5.

XXX. Surveyor's account.

Account.

The surveyor before he shall be discharged from his office, shall at some special sessions give an account upon oath of all money that has come to his hands, which ought to be employed in amending of the highways; and how he hath disposed thereof; and if any shall remain in his hands, he shall deliver the same to his successor, and in case of failure, he shall forfeit double value of what shall be adjudged to be in his hands by the said justices, to be levied by distress, by warrant of two justices of the division.

and in default thereof, of any neighbouring justices. 3 W. c. 12.
 f. 9. For which account or oath no fee shall be taken. 1 G. 2.
 c. 52. f. 11.

Appeal.

XXXI. Appeal.

1. If any person is aggrieved with any assessment, or other act by the justices, done on the statute of 3 W. c. 12. he may appeal to the sessions, whose order therein shall bind all parties. f. 10.

2. And persons aggrieved by any thing done on the act of 1 G. 2. c. 52. (except those who shall neglect to scour their ditches, and carry away the earth taken out of them, or who shall not carry away stone, timber, straw, or dung left in the highways, or who shall not remove any other annoyances by watercourses) may appeal to the next sessions, whose order shall conclude and bind all persons. f. 12.

3. Other appeals, where the law admits of them, are annexed to the particular offences.

XXXII. Turnpikes.

Alehousekeepers
not be turnpike
officers.

1. No person keeping a victualling house, alehouse, or other house of publick entertainment, shall be capable of any place of trust or profit under turnpike trustees, or of farming the tolls. 26 G. 2. c. 30. f. 20.

Erecting a turn-
pike gate with-
out lawful
power.

2. If the trustees shall erect or continue any turnpike gate, where they have no power so to do; the justices in sessions, on complaint thereof, may finally determine the same in a summary way, and order the sheriff to remove it. 5 G. 2. c. 33. f. 4. 8 G. 2. c. 20. f. 17.

Pulling down
turnpike gates.

3. By the 8 G. 2. c. 20. If any person shall either by day or night, wilfully or maliciously pull down, cut down, pluck up, throw down, level, or otherwise destroy any turnpike gate, post, rail, wall, chain, bar, or other fence, belonging to any turnpike gate, or any other chain, bar, or fence set up to prevent passengers from passing by without paying toll, or any house erected for the use of any turnpike gate, or forcibly rescue any person in custody for any the said offences, he shall be guilty of felony without benefit of clergy. f. 1.

And the said offences may be tried in any adjacent county. id. f. 3.

And by the 5 G. 2. c. 33. which made the like offences felony and transportation, the charges of prosecution shall be paid out of the tolls.

But the attainder shall not work corruption of blood, nor forfeiture of lands or goods. 8 G. 2. c. 20. f. 4.

And if any person, guilty of any the said offences, and being out of prison, shall discover and cause to be apprehended, one or more persons who shall have committed any of the said felonies, so as he shall be convicted, he shall have a pardon. 8 G. 2. c. 20. f. 5.

And

And the hundred shall answer damages, not exceeding 20*l.* as in cases of robbery; to be sued for in the name of the clerk of the peace, without naming him; the said damages to be applied as the tolls are. 8 G. 2. c. 20. s. 6, 8.

But if an offender is convicted in 12 months, the hundred shall not be liable, but if they have paid such damages, the same shall be repaid to them out of the tolls. 8 G. 2. c. 20. s. 7.

Also no action for such damages shall be brought, unless information on oath be made thereof within six days, before a justice in or near the hundred. 8 G. 2. c. 20. s. 9.

Nor unless the suit be commenced in six months. s. 10.

4. If any person shall assault or threaten the collector of the toll, or forcibly pass thro' without paying toll, or shall forcibly carry away or detain him so as he shall not be able to return to his duty for three days; he shall, on conviction (after summons) by oath of one witness, before two justices near the division, forfeit 5*l.* by warrant of the said justices, by distress; for want of distress, to be committed by them to gaol for six months, unless he shall be sooner discharged by the quarter sessions; and for the second or third offence, he shall forfeit 10*l.* in like manner, and for want of distress shall be imprisoned for a year, and before he is discharged shall give security at the general quarter sessions for his behaviour for seven years. 8 G. 2. c. 20. s. 11.

Misusing the collector of the tolls.

And the collector of the toll may seize and detain any person guilty of the offences before mentioned, and carry him before a justice without a warrant; who shall bind him over to appear at the next petty sessions for the division, or commit him till he finds security to appear. 8 G. 2. c. 20. s. 12.

But persons aggrieved by any order of two justices as aforesaid, may appeal to the next general quarter sessions; and if the court shall think that reasonable time of notice was not given, they may adjourn the appeal to the next quarter sessions; and may award costs to either party. *id.* s. 15.

And no *certiorari* shall be granted to remove any thing on this act, out of the county, into any other court. *id.* s. 16.

And if an action is brought against any on this act, it shall be laid in the proper county; and the defendant, if he recovers, shall have treble costs. *id.* s. 18.

5. The turnpike trustees, or any five of them, may cause to be erected (on any part of the turnpike road, 21 G. 2. c. 28. s. 1.) a crane, machine, or engine, for the weighing of carts, waggons, or other carriages, for the conveying of goods; and by writing signed by them, may order such carriages which pass through such gate, to be weighed with their loading; and empower any person to take, over and above the other toll, 20*s.* for every hundred weight above 60; to be levied as the other tolls. 14 G. 2. c. 42. s. 1, 3.

Weighing engines, with the additional toll for over-weight.

And if it is within 30 miles of London, and the tolls amount to 150*l.* a year, they shall in some convenient place, cause such crane or engine to be erected. 24 G. 2. c. 43. s. 6, 7.

And if any person shall hinder, or attempt to hinder, the weighing, or seizing any distress for such additional toll, or shall

rescue the same, or use any violence to any person concerned in such weighing or seizure; he shall, on oath of one witness, before one justice where the offence shall be committed, or the offender shall dwell, be committed to gaol for three months, and forfeit 10*l.* by distress; and if not paid in three days, to be sold. 14 G. 2. c. 42. s. 4.

And if any person shall unload, or cause to be unladen, any goods out of any such carriage, before the same shall come to the weighing engine, in order to avoid paying the 20*s.* or shall after it has pass'd the engine, load thereon any goods taken from any horse or other carriage belonging to such waggoner, he shall forfeit 20*l.* in like manner. 21 G. 2. c. 28. s. 2.

But this shall not extend to carts, waggons, or other carriages, employed only about husbandry, or carrying of only cheese, butter, hay, straw, corn unthreshed, or chalk, or any one stone, block of marble, or piece of timber, nor to caravans, or the covered carriages of noblemen and gentlemen for their private use, or such timber, ammunition, or artillery, as shall be for his majesty's service. 14 G. 2. c. 42. s. 5.

Also, it shall, notwithstanding, be lawful for any carriage laden with or carrying one tree or piece of timber, or one stone, or block of marble only, having the fellies of the wheels nine inches broad, to pass on any turnpike road, with any number of horses or beasts; and for any waggon, or other four wheel carriage, having the fellies nine inches broad, to pass on any turnpike road, with any number of horses or beasts, not exceeding eight; and for any cart or other two wheel carriage, having the fellies nine inches broad, with any number not exceeding five; without being liable to be weighed, or to pay the additional toll of 20*s.* 26 G. 2. c. 30. s. 4.

And no greater toll on turnpike roads shall be demanded for carriages having wheels nine inches broad, than is required by the respective turnpike acts to be paid for waggons or other four wheel carriages, drawn by five or four horses or beasts. 26 G. 2. c. 30. s. 7.

Waggon turned
out of the road
to avoid the tolls.

6. And no waggon, or other carriage, travelling for hire, upon any turnpike road, shall be turned out of the same, into any of the roads adjacent not being turnpike, in order to avoid, and thereby avoiding paying the tolls; on pain of forfeiting any one of the horses drawing (not being the thill or shaft horse) with all his geers and accoutrements, to the sole benefit of any person who shall seize the same; and the person making such distress, shall proceed in like manner, and be intitled to the like remedies, as is before directed in cases of seizures of horses, by the statute of the 5 G. c. 12. 24 G. 2. c. 43. s. 4.

Breadth of the
wheels.

7. After Sep. 29. 1754, it shall not be lawful for any waggon, wain, cart, or wheel carriage, to be drawn on any turnpike road, unless the fellies of the wheels be nine inches broad; on pain that the owner thereof shall forfeit 5*l.* half to him who shall inform and sue, and half to the trustees for repairing the turnpike road: to be recovered in the courts at *Westminster* with treble costs; or before two justices where the offence shall be com-

committed, who may on complaint in ten days, summon the party, and the witnesses on either side; and if the party shall not appear on such summons, then on oath of the fact committed they may issue their warrant for apprehending him within their jurisdiction; and upon his appearance or contempt (on proof of notice given) they may proceed; and if he shall be convicted, either by view of the justices or any of them, or on such information, or confession, they may issue their warrants to levy the penalty with costs of prosecution, by distress, and if not redeemed in five days, by sale; and where goods of the offender cannot be found, may commit him to prison for three months, or till payment. Persons aggrieved may appeal to the next general sessions, giving fourteen days notice; and in five days after such notice, entering into recognizance with two sureties before one justice, to try the appeal: and the sessions may mitigate the penalty; and may give costs, and by their order or warrant cause the costs to be levied by distress of the goods of the party appealing, and for want of sufficient distress may commit him to the common gaol, not exceeding two months, or till payment of such costs; and if the party shall live in another district, any justice there, on a copy of the order proved upon oath, may by his warrant cause the same to be levied by distress, and if no sufficient distress can be had, shall commit him to the common gaol not exceeding two months, or till payment. 26 G. 2. c. 30. s. 1, 16, 17.

Or otherwise such owner shall forfeit any one of the horses or beasts, not being the chill horse, together with the accoutrements, to the sole use of him who shall seize or distrain the same. And the person seizing shall deliver such distress to the constable or some other parish officer in or near the place where the seizure shall be; who shall receive and keep the same, till the person seizing shall make proof on oath before a justice of the offence; which justice shall thereupon issue his precept to such constable or parish officer immediately to deliver the same to the seizer, to and for his own use and benefit, paying such reasonable charges for keeping and securing the same, as the justice shall direct; but if no such proof be made in three days, the distress shall be returned to the owner, he paying reasonable charges for keeping and securing the same. And if any person shall attempt to obstruct the distraining thereof, he shall forfeit 10 l. to be recovered and disposed as above. s. 2, 13.

And if any person shall *drive* with wheels of less gage, or with more than the number of horses abovementioned (that is to say, with more than eight horses in four wheel carriages, or more than five in two wheel carriages, except such as are carrying one piece of timber, or one stone, or block of marble); the constable, or surveyor of the highways, or any other inhabitant of the parish or place where the offence shall be committed, and the surveyor of the turnpike, or any person appointed by five trustees, may apprehend and take such driver before a justice; and on conviction by confession, or oath of one witness, he shall forfeit 5 l. and if he have no goods whereon immediate distress may be had, the justice

may commit him to the house of correction for one month, or till paid. *f. 14.*

And any two turnpike trustees, by writing under their hands, may order the fellies to be measured at the turnpike gate; and if any person shall attempt to obstruct the measuring thereof, he shall forfeit 10*l.* in like manner. *f. 11, 13.*

But if it shall appear, that the fellies when first made were of nine inches, and are narrowed by wearing, no penalty shall be incurred if they measure full eight inches. *f. 12.*

But this shall not extend to any chaise marine, coach, landau, berlin, chaise, or calash; nor to any waggon drawn by less than five horses or beasts: nor wain, cart, or other two wheel carriages, drawn by less than four; nor to any wheel carriage drawn by oxen or neat cattle only. *f. 3.*

Waggon to have
the owner's
name thereon.

8. If any owner of any waggon, wain, or cart, travelling for hire, shall after *29. 1754.* drive or cause the same to be driven, on any turnpike road, not having his christian and surname and place of abode, in large letters on the tilt or other conspicuous part of such waggon; he shall forfeit as for having the fellies under nine inches broad: and if he shall have any fictitious name thereon, he shall forfeit 50*l.* to be recovered in the courts at *Westminster*, or before two justices as is aforesaid. 26 G. 2. c. 30. *f. 15.*

Prosecution how
to be ordered for
offences against
turnpike laws.

9. The turnpike trustees, or five of them, shall appoint persons to carry on prosecutions, for offences against any acts relating to turnpike roads; and charge the surveyors to be diligent in inquiring after such offences: and all turnpike officers shall (on pain of removal and disability) as often as any offence shall come to their knowledge, give immediate notice to a trustee, who shall forthwith procure a meeting of the trustees or five of them, who shall give immediate directions for prosecution. 26 G. 2. c. 30. *f. 18, 19.*

Provided, that they shall not be obliged to prosecute, unless on confession of the offender, or unless one witness can be produced to prove the offence. *f. 22.*

And the trustees, or five of them, shall out of the tolls pay to the prosecutor, so much as the costs allowed by law shall fall short of reimbursing him his reasonable expences. *f. 21.*

Constable to ex-
ecute the war-
rants of the tru-
stees.

10. The constable shall execute all warrants on the act of 8 G. 2. c. 20. abovementioned, and on any former act concerning turnpikes; on pain of 5*l.* to be levied by distress, by warrant of two justices directed to the high constable, in like manner as the penalties for assaulting the collector of the toll. 8 G. 2. c. 20. *f. 13.*

Having thus gone through the great number of laws relating to the highways, I shall add one observation upon the whole, which is this; — Notwithstanding that the wisdom of the nation hath been employed for above 200 years in redressing the great evil of bad roads, yet excepting in some cases where turnpikes have been erected, the roads are as bad now, as they were in the days of *Philip and Mary*. And the defect is in many places, not so much
the

the want of hands, as of proper direction. The same multitudes which will assemble to demolish a turnpike, at the hazard of their liberty and lives, are able, and (I doubt not) would be willing, if rightly instructed, to make the roads good, without paying turnpike tolls. But the misfortune is this; altho' the laws have provided that the surveyors shall be chosen out of the more substantial inhabitants, yet when that is done, scarce one of them in 500 knows how to make a good road, and if he does, his power continues in effect but for six days; and his successor probably hath other schemes and notions, and the road is made never the better. Hence it is, that when the people assemble to repair the highways (if indeed they do assemble), they spend the time in diversions, and making bargains, and other idle amusements. And why should they not? They may as well meet and do nothing, as work hard, and to no purpose. And from so many years experience, the case will never be otherwise, unless the justices of the peace, or others (in like manner as the turnpike trustees), shall have power given to them by act of parliament, to appoint general surveyors, within proper districts, with salaries, to lay out the roads, and attend and direct the work, and see the statute labour well performed. And this may be effected without any new assessment or charge; half the present assessment of 6 *d.* in the pound, or even less than half, would be sufficient in many places both to find salaries, and to widen and purchase roads where needful. And the people, when they should find the benefit of their labour, would work with cheerfulness.

There is another defect, especially in the Northern counties, in proportioning the number of men and carriages. The law requires no persons to find carts or carriages (as hath been said) but those who have 50 *l.* a year, or who keep a draught or plough: All others (having above 40 *s.* a year) are to find two men, but no cart or carriage. Now in many places, the people who occupy 50 *l.* a year, or who keep a draught or plough are very few in comparison of those who keep a single horse and cart, and have not perhaps two able men in the family: In which case, it would be more eligible and useful, for such families to find one man with the horse and cart, than two men without the same.

A. Warrant for the returning new surveyors; on
3 *W. c.* 12. *s.* 3, 9.

Westmorland. } To Edward Cooke, gentleman, high constable of
Lonsdale Ward, within the said county.

BY virtue of the statute in that behalf made, You are hereby required forthwith to issue your warrants to all the petty constables within your said Ward, in the form or to the effect following; that is to say:

Westmorland }
Lonsdale Ward. } To the constable of _____.

BY virtue of a precept from his majesty's justices of the peace, acting in and for the said Ward, within the said county, at their special sessions for the highways within the said Ward assembled, you are hereby required to give due notice to the churchwardens, surveyors of the highways, and other inhabitants, within your parish, that they do assemble together with you the said constable, on the 26th day of December next, and make a list of the names of a competent number of the inhabitants within your said parish, who have an estate in lands, tenements, or hereditaments, in their own right or of their wives, of the yearly value of 10l. or a personal estate of the value of 100l. or are occupiers or tenants of houses, lands, tenements, or hereditaments of the yearly value of 30l. if any such there be, or if there be no such persons in your said parish, then the said list to be of the most sufficient inhabitants within your said parish; With which said list you are personally to appear before the said justices at their special sessions to be holden at _____ within the said Ward in the county aforesaid, on the _____ day of _____ now next ensuing, at the hour of _____ in the forenoon of the same day; that out of the said list the said justices then and there may nominate and appoint such persons to be surveyors of the highways within your said parish for the year then next ensuing, as they the said justices shall think fit and approve of. [And you are likewise to give notice to the present surveyors, that they do appear at the same time and place, and give an account upon oath before the said justices, of all money that hath come to their hands, which ought to be employed in amending of the highways, and how they have disposed of the same.] Given under my hand at Hall Beck in the said county, the _____ day of _____

Edward Cooke,
High Constable.

And this you the said high constable are in no wise to omit, on the peril that shall ensue thereof: Given under our hands and seals at our special sessions at _____ in the said county, the _____ day of _____ in the _____ year of the reign of _____.

B. Appointment of the surveyor.

Westmorland }
Lonsdale Ward. } At a special sessions of the peace for the said Ward, held at _____ in the said Ward, within the county aforesaid, the _____ day of _____ in the _____ year of the reign of _____ by and before _____ esquires, justices assigned to keep the peace of our said lord the king in the said county:

WE the said justices do hereby nominate and appoint A. S. of _____ in the parish of _____ in the county aforesaid, yeoman, to be surveyor of the highways within the said parish [or, within the township of _____ within the said parish] for one whole

whole year next ensuing the date hereof, and until he shall have given an account of his receipts and disbursements and other matters relating to his said office, according to law. Given under our hands and seals the day and year first abovewritten.

C. Indictment for not repairing a common highway.

THE jurors for our lord the king upon their oath present, that from the time whereof the memory of man is not to the contrary, there was, and yet is a common and ancient king's highway, leading from the town of — in the county of — towards and unto the market town of — in the county of —, used for all the liege subjects of our said lord the king, and of his predecessors, with their horses, coaches, carts, and carriages, to go, return, pass, ride, and labour at their will and pleasure; and that a certain part of the same king's common highway, called — situate, lying, and being in the parish of — in the county of — aforesaid, containing in length — feet, and in breadth — feet, on the — day of — in the — year of the reign of — and continually afterwards, until the day of the taking of this inquisition, was and yet is in great decay, for the want of due reparation and amendment of the same, so that the subjects of our said lord the king, passing and travelling thro' the same, with their horses, coaches, carts, and carriages, could not during the time aforesaid, nor yet can, go, return, pass, ride, and labour, without great danger; to the great damage and common nuisance of all the liege subjects of our said lord the king, passing thro' that way, and against the peace of our said lord the king, his crown, and dignity: And that A. O. of — aforesaid, gentleman, ought by reason of the tenure of his lands and tenements, situate, lying, and being at — aforesaid, in the county aforesaid, to repair and amend the said highway, when and so often as it shall be necessary.

Or, that the inhabitants of the said parish of — in the said county of — the common highway aforesaid (so as aforesaid being in decay) ought to repair and amend, when and so often as it shall be necessary.

Indictment for not repairing an ancient horse and foot way.

THE jurors for our lord the king upon their oath present, that from the time, of which the memory of man is not to the contrary, there was, and yet is, a certain common and ancient highway, leading from — in the county of — to — in the county of — for all the liege subjects of our now lord the king, and his ancestors, on horseback and on foot, to go, return, pass, ride, labour, and drive their cattle at their will, and that a certain part of the same common highway, situate, lying, and being within the parish of — in the county of — aforesaid, containing in length — feet, and in breadth — feet, on the — day of — in the — year of the reign of — and continually afterwards, until the day of the taking of this inquisition,

quisition, at the parish of ———, aforesaid, in the county aforesaid, was, and yet is, very ruinous, miry, deep, broken, and in such decay, for want of due reparation and amendment of the same, that the liege subjects of our said lord the king, by and thro' the same way, with their horses and cattle, could not during the time aforesaid, nor yet can go, return, pass, ride, and labour, as they ought and were wont to do, without great danger of themselves and of their goods, to the great damage and common nuisance of all the liege subjects of our said lord the king, thro' the same highway going, returning, passing, riding, and labouring, and against the peace of our said lord the king. And that the inhabitants of the same parish of ——— in the county aforesaid, the same common highway, so as aforesaid being in decay, ought to repair and amend, when, and so often as it shall be necessary.

Indictment for incroaching upon a highway, by building thereupon.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that one A. O. late of ——— carpenter, the ——— day of ——— in the ——— year ——— with force and arms, at ——— in and upon a common highway, in a certain place commonly called ——— there leading from ——— to ——— by a certain building there, containing in length ——— feet, and in breadth ——— feet, by him the said A. O. erected and built, hath unlawfully and unjustly incroached, and doth yet incroach, and the building aforesaid so as is aforesaid erected and built by him the said A. O. from the aforesaid ——— day of ——— in the year aforesaid, unto the day of exhibiting this information, at ——— aforesaid in the county aforesaid, with force and arms, unlawfully and unjustly hath continued and doth yet continue, by reason whereof the common highway aforesaid hath become and is greatly straitned, so that the lieges and subjects of the said lord the king upon and thro' the same common highway aforesaid, with their horses, carts, and carriages cannot go, pass, ride, and labour as they ought and were wont to do, to the great and common nuisance of all the lieges and subjects of the said lord the king in and thro' the said common highway going, passing, riding, and labouring, and against the peace of the said lord the king. Trem. 196.

Indictment for inclosing the highway.

Westmorland. **T**HE jurors of our lord the king upon their oath present, That whereas from the time whereof the memory of man is not to the contrary, it was used, that the liege subjects of our said lord the king had and lawfully used a certain common highway at ——— in the said county, in a certain place there called ——— leading from the town of ——— aforesaid, to the town of ——— for themselves and their goods, without any stoppage or hindrance by any ditches, hedges, or other obstacles whatsoever; nevertheless one

A. O. of ——— aforesaid, in the county of ——— aforesaid, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— with force and arms, at ——— aforesaid, in the county of ——— aforesaid, in the place aforesaid called ——— upon the common highway aforesaid, a certain ditch and quickset hedge did cast up, set, and erect, and the said ditch and quickset hedge so as is aforesaid cast up, set, and erected, doth yet continue and keep; to the great stoppage and hindrance of the liege subjects of our said lord the king, passing in and thro' the said common highway, and against the peace of our said lord the king.

Indictment for laying timber or other obstructions in the highway.

THE jurors for our lord the king upon their oath present, that A. O. late of ——— in the county aforesaid, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— and on divers other days and times, as well before as afterwards, with force and arms, at ——— in the said county, in and upon the king's common highway there, leading from ——— unto the town of ——— divers great pieces of timber put and placed and caused to be put and placed, and the same great pieces of timber so as aforesaid put and placed, from the aforesaid ——— day of ——— in the ——— year aforesaid, until the day of exhibiting this information, in and upon the king's common highway aforesaid, to be, lie, and remain, hath permitted, and doth still permit, to the grievous and common nuisance of all the lieges and subjects of the said lord the king, upon and thro' the king's common highway aforesaid going, passing, riding, and travelling, and against the peace of our said lord the king, his crown and dignity. Trem. 197.

Or, — great quantity of dung, and other filth, by reason whereof, divers hurtful and unwholsome smells from the said dung and other filth did then and there arise, and thereby the air there became, was, and is corrupted and infected —

Or, — cart loads of rubbish — by reason whereof the said highway for the whole time aforesaid was straitned and obstructed, so that the liege subjects of our said lord the king could not so freely pass and repass about their lawful business, thro' the said common highway there, as they ought and have been accustomed —

Indictment for stopping up a watercourse, whereby the highway is overflowed.

Westmorland. **T**HE jurors for our lord the king upon their oath present, that A. O. late of the parish of ——— in the county aforesaid, yeoman, on the ——— day of ——— in the ——— year of the reign of ——— with force and arms, at the parish aforesaid, in the county aforesaid, a certain ancient watercourse, adjoining to the king's common highway, within the same parish,

ribs, leading from the town of ——— in the county aforesaid, towards and unto ——— with gravel and other materials, unlawfully and injuriously did obstruct and stop up; and the said watercourse, so as aforesaid obstructed and stopped up, from the said ——— day of ——— in the year aforesaid, until the day of the taking of this inquisition, at the parish aforesaid, in the county aforesaid, unlawfully and injuriously hath continued, and still doth continue, by reason whereof the rain and waters that were wont, and ought to flow and pass thro' the said watercourse, on the same day and year, and divers other days and times afterwards, between that day and the day of the taking of this inquisition, did overflow and remain, in the king's common highway aforesaid, and thereby the same was, and yet is greatly hurt and spoiled, so that the liege subjects of our said lord the king, through the same way, with their horses, coaches, carts, and carriages, then, and on the said other days and times, could not, nor yet can go, return, pass, ride, and labour, as they ought and were wont to do; to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same highway going, returning, passing, riding, and labouring, and against the peace of our said lord the king.

D. Presentment by a justice on his view.

Westmorland. **A**T the general quarter sessions of the peace of our lord the king, held for the county of ——— aforesaid, at ——— in the said county, on Monday the ——— day of ——— in the ——— year of the reign of ——— before ——— esquires, and others their companions, justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, Thomas Carleton, esquire, one of the justices of our said lord the king assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, by virtue of the statute in such case made and provided, upon his own proper knowledge doth present, That from the time whereof the memory of man is not to the contrary, there was, and yet is, a certain common and ancient king's highway, leading from the town of ——— in the county of ——— towards and unto ——— used for all the liege subjects of our said lord the king and his predecessors, with their horses, coaches, carts, and carriages, to go, return, pass, ride, and labour at their will; and that a certain part of the same king's common highway, commonly called ——— situate, lying, and being in the parish of ——— in the same county, containing in length ——— yards, and in breadth ——— feet; on the ——— day of ——— in the ——— year of the reign of ——— and continually afterwards, until this present day, at the said parish of ——— in the county aforesaid, was and yet is very ruinous, miry, deep, broken, and in great decay for want of due reparation and amendment of the same, so that the liege subjects of our said lord the king, through the same way, with their horses, coaches, carts, and carriages, could not during the time aforesaid, nor yet can go, return, pass, ride, and

and labour as they ought and were wont to do, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same highway going, returning, passing, riding, and labouring, and against the peace of our said lord the king; and that the inhabitants of the parish of ———— aforesaid, in the county aforesaid, the common highway aforesaid (so as aforesaid being in decay) ought to repair and amend, when and so often as it shall be necessary. In testimony whereof, the said Thomas Carleton, to these presents hath set his hand and seal, this ———— day of ———— in the year aforesaid.

Highwaymen. See Robbery.

Here endeth the FIRST VOLUME.

ADVERTISEMENT.

Mr. MILLAR acquaints the Publick, that *Blank forms of warrants*, and all other instruments, for the ready use of Justices Clerks and High Constables, according to the *new drawn precedents* of this book, will be printed, by his appointment, if there is a *proper* demand for them. A Catalogue whereof here followeth:

1. General warrants.
2. General summons's.
3. General mittimus's.
4. Mittimus's for felony.
5. Warrants for the peace.
6. Warrants for the good behaviour.
7. Commitment for want of sureties.
8. Superfedeas on sureties found.
9. Liberate to discharge one out of prison.
10. Recognizance for the peace.
11. Recognizance for the good behaviour.
12. Recognizance to prefer a bill of indictment for felony.
13. Recognizance to prefer an indictment for a misdemeanor.
14. Recognizance to give evidence in case of felony.
15. Recognizance to give evidence on a misdemeanor.
16. Recognizance to answer to an indictment.
17. General recognizance without sureties.
18. General recognizance with sureties.
19. Alehouse licences, ready stamped; for such as have been licensed before.
20. Alehouse licences, ready stamped; for such as have not been licensed before.
21. Alehouse-keeper's recognizance.
22. Warrant to demand the penalty for drunkenness.
23. Warrant of distress for drunkenness.
24. Commitment to the stocks for drunkenness.
25. Summons of the master of an apprentice, by two Justices.
26. Discharge of an apprentice, by two Justices; on the master's misusing him.
27. Warrant for an apprentice, by two Justices.
28. Commitment of an apprentice to the house of correction, by two Justices.
29. Examination of a woman with child of a bastard.
30. Warrant to apprehend the reputed father, before the birth.
31. Commitment of the reputed father, before the birth.
32. Bond to indemnify the parish, ready stamped.
33. Recognizance, before the birth, to appear at the sessions.
34. Warrant to convene the parties in order to the filiation.
35. Order

ADVERTISEMENT

35. Order of bastardy.
36. Warrant for keeping dogs or engines.
37. Distress for keeping dogs or engines.
38. Commitment for keeping dogs or engines.
39. Appointment of surveyors of the highways.
40. Appointment of assessors of the land tax, with their charge.
41. Appointment of the collectors of the land tax, with warrant to collect.
42. Appointment of assessors of the window duties, with their charge.
43. Appointment of collectors of the window duties, with warrant to collect.
44. Appointment of overseers of the poor.
45. Certificate of a person's settlement.
46. Warrant to examine a person as to his settlement.
47. Summons to shew cause against the adjudication of the settlement.
48. Warrant to bring a person before two Justices, in order to be removed.
49. General order of removal.
50. Removal of a certificate person.
51. Notice of appeal against an order of removal.
52. Summons for non-payment of the poor rate.
53. Warrant of distress for the poor rate.
54. Summons to shew cause why a pauper should not be relieved.
55. Order for relieving him.
56. Indenture of a parish apprentice, ready stamped.
57. Search warrant for stolen goods.
58. Summons of a master for servants wages.
59. Order for payment of wages.
60. Warrant of distress for wages.
61. Warrant for a disorderly servant.
62. Commitment of a servant to the house of correction.
63. Summons for a master misbehaving.
64. Discharge of the servant thereupon.
65. Certificate of a soldier inlisting.
66. Warrant for soldiers carriages.
67. Summons for swearing.
68. Commitment for swearing.
69. Conviction for swearing.
70. Complaint for small tithes.
71. Summons for small tithes.
72. Order for payment of small tithes.
73. Warrant of distress for small tithes.
74. Summons for quakers tithes.
75. Order for payment of quakers tithes.
76. Warrant of distress for quakers tithes.
77. Order to pay 5 s. for apprehending a person begging in his own parish.
78. Order for payment of 10 s. for apprehending a vagrant.
79. Warrant to the constable for whipping a vagrant.
80. Commitment of a vagrant to the house of correction.

81. Vagrant

ADVERTISEMENT.

81. Vagrant examination and pass within the same jurisdiction.
82. Vagrant examination and pass from county to county.
83. Vagrant pass to *Scotland*, with the examination annexed.
84. Vagrant pass to *Ireland*, with the examination annexed.
85. Certificate for the constable's allowance.
86. Sailor's pass.
87. Warrant to search for stolen wood.
88. Order for satisfaction to the owner.
89. Commitment thereupon for non-payment.
90. Commitment to the house of correction for destroying trees.
91. Affidavit for burying in woollen.
92. High constables warrants ; viz.

- A. For alehouses.
- B. For the county rate, to the overseers.
- C. For the county rate, to the constables.
- D. For surveyors of the highways.
- E. For returning lists of jurors.
- F. For assessors of the land tax.
- G. For assessors of the window duties.
- H. For overseers of the poor.
- I. For keeping watch and ward.
- K. For privy search for vagrants.
- L. For petty constables presentments at the assizes.

